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*Geo. H. Young*

*Young, Black, R. J.*

## REVIEW

OF THE

## PROCEEDINGS

OF THE

## LEGISLATURE OF LOWER CANADA

IN THE SESSION OF 1831;

WITH AN

## APPENDIX

CONTAINING SOME IMPORTANT DOCUMENTS

NOW FIRST GIVEN TO THE PUBLIC.

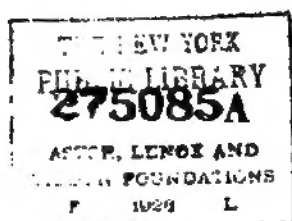
Ἡμεῖς δὲ οὐδ' αὐτοὶ φημεν ὅτι τῇ ὕπὸ τούτῳ ὑφ' ἡμῶν κατασκευῇ,  
ἀλλ' ὅτι τῇ ὑγίαινι τε υἱαὶ καὶ τῇ ἰκότητι θεωρεῖσθαι. αἱ γοῦν  
ἄλλαι ἀποικίαι τιμωροὶ ἡμῶν, καὶ μάλιστα ὑπ' ἀποικίαι στεγασμέναι,  
καὶ δεῖλαι ὅτι αἱ τοῖς πλείοσι κεραιότητι ἡμῶν, τοῖσδ' αἱ μοῖραι οὐκ  
εὖθις ἀπαρτίζονται.—THUCYDIDES.

Nec me fallit, ut in corporibus hominum, sic in animis multiplices passiones afflicte,  
medicamenta verborum multis inefficacia visum est. Sed nec illud quoque me preterit,  
ut invisibiles animorum morbos, sic invisibilia esse remedia. Falsis opinionibus cir-  
cumveniri, veris sententiis liberandi sunt, ut qui audiendo occiderant audiendo conser-  
vant.—ESTRABCA.

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1832.



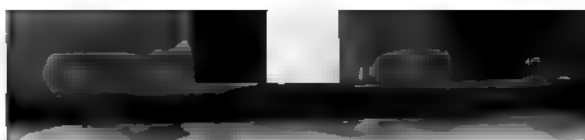
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THE LATE SESSION  
OF THE  
PROVINCIAL PARLIAMENT.

NO. I.

INTRODUCTION.

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*Nil admirari prope res est una Numici  
Solaque quæ possit facere et servare beatum.*—HORACE.

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THE opening of the Session of the Provincial Parliament which has just closed its labours, was looked forward to by all those who had given any attention to the public affairs of the Province, with more than ordinary interest.

The reins of government had just been assumed by the nobleman now at its head, and possessing, as he was understood to do, explicit instructions upon the principal subject of controversy in the Colonial Legislature, it was anticipated that the communication through him, of the views of his Majesty's Government, would relieve the several branches of the Legislature from the uncertainty which had hitherto most unaccountably been allowed to exist upon this head, and which there was reason to believe had widened a breach that might otherwise have been prevented, and might now, it was hoped, be at last repaired. Nor were there wanting other subjects to which the public attention had been for several years past called, and in relation to which diversities of opinion had existed, that in like manner could not fail to occupy



the Legislature and to fix the public mind upon the result of its deliberations.

The public, in full possession of the course pursued by the Legislature upon these important objects, looked forward with some anxiety to the speech of his Excellency the Governor-in-Chief, at the close of the Session, as being likely to contain indications at least of his Excellency's opinions upon these subjects, and as affording an index to the policy which his Excellency was likely to pursue.

If the language used in this speech was not the most satisfactory to all, it had at least the merit of being free from ambiguity. His Excellency was pleased, not merely to express his approbation of the conduct of the Assembly, but introducing a term somewhat novel in the measured language of the public communications between the different branches of the Legislature, declares in the opening of his speech, "I cannot close the present Session of the Provincial Parliament without expressing my admiration of the unremitting attention you have bestowed on the public business of the country, and your unwearied exertions in performing all your other parliamentary duties." And afterwards, "The measure of my thanks would have been complete, had circumstances enabled me to assure his Majesty's Government that the propositions on the subject of Finance, lately submitted to you by the King's command, had been favourably received."

As one of the persons represented in the Assembly, I may be permitted to exercise the right of enquiring into, and of judging to the best of my ability, of the public conduct and the public measures of the representatives of myself and of my fellow subjects; so, too, as a free born British subject, my right to express publicly my sentiments thereon cannot be denied; and if these sentiments should not be in entire accordance with the opinion of the noble individual now at the head of the Provincial Government, I trust that this will not be imputed to me as a crime.

I am quite aware that there are men, with good intentions.

who will be disposed to consider inquiries like this, as trenching upon the respect justly due to high office.

These discussions, to be useful, I readily own, must be conducted with the strictest decorum; and freedom of discussion is not impaired by a studious regard to the proprieties of life.

A free press is the soul of a free constitution: It must, however, be borne in mind, that licentious scurrility is as adverse to the freedom of the press, as a servile time serving silence, or a corrupt subserviency.

It is a very old error, which many are interested in propagating, that public discussions produce what they do but disclose; and that the unseemly objects which they are sometimes the means of bringing under our view, owe their birth to this cause, when in truth to it they owe the air which is to purify, and the light which is to heal them.

The ostrich is not the only bird which thinks itself safe so long as it keeps itself in an obstinate voluntary darkness.

In our days, however, nothing is better understood than that the freedom of the people and the safety of governments are alike consulted by freedom of inquiry in all matters touching the public.

This truth, universal as it is, applies with peculiar force to governments so remote from the source of authority as colonial governments are, environed too with so many causes of error, and with such inadequate means of protection against them.

With these preliminary explanations, I may be permitted, without incurring the reproach of disaffection to his Majesty's Government, to say, that after carefully following the proceedings of this Session of the Legislature, step by step, and exercising upon these proceedings the most impartial judgement in my power, I find myself unable to participate in the sentiments of admiration expressed by his Excellency, and utterly at a loss to conjecture what may have given occasion to them in his Excellency's breast.

Had his Excellency's emotion proceeded from any cause other than one of a public nature, I would have felt little curiosity to enquire into its source, and if that had accidentally come to my knowledge, I should have felt it my duty to pass it over in silence.

But as to things of public concern, I have already said that I think our duty imposes another rule. These are legitimate subjects of free and public discussion, and the more elevated the rank and the office of the individual who becomes the subject of it, the more minute and careful ought to be the scrutiny. This course is surely a better one than that which has hitherto been too often pursued, of pouring forth a full measure of flattery to Governors whilst they are within the Colony, to be replaced by an equal measure of indifference, if not of abuse, when they leave their government.

Disposed neither to flatter nor to abuse men in authority, or out of authority, I shall submit to the judgement of the public a general outline of the proceedings of the Legislature, which have called forth the expression of the gratitude of the Governor-in-Chief, with the view of ascertaining the sufficiency of its grounds.

And I will conclude with stating some reasons for doubting whether the rejection of the measure proposed by his Majesty's Government for the settlement of the difficulties which have been called the financial difficulties, may not have produced other and greater inconveniences than the absence of that complement of his Excellency's satisfaction, which he is pleased to inform the Legislature and the public, that its adoption would have afforded him.

## NO. II.

## OPENING OF THE LEGISLATURE.

*Obata principis.*

THE severe indisposition of his Excellency the Governor-in-Chief, on the day fixed for the opening of the Legislature, not permitting him to meet the Council and Assembly at the usual place, the first subject of deliberation with his Excellency related to the course to be pursued in consequence of this untoward circumstance.

There seemed to be but two courses which his Excellency could have pursued : he might, either by the usual instrument under the Great Seal, have prorogued the Parliament to some subsequent day, when it might reasonably be expected that his health would be re-established ; or he might by message have desired the two branches of the Legislature to adjourn either to a specific day, or from day to day. This last course was that which he decided upon. It will be recollected that this being the first Session of the present Parliament, the Speaker of the Assembly could not be regularly elected until the House had been summoned to his Excellency's presence, and had received his commands to name their Speaker; and that previous to the nomination of a Speaker, the Clerk of the Assembly is the organ of that body and presides over it. It will also be recollected that, according to established usage, the Civil Secretary conveys the messages of the Governor, for the time being, to the other two branches of the Legislature, delivering them personally in the several Houses to their respective Chairmen or Speakers.

On the first day, then, of the meeting of the House, Lieutenant-Colonel Glegg, Civil Secretary of his Excellency, delivered personally in the body of the House, to the Clerk of the Assembly, then occupying the chair, the following message:—

CASTLE OF ST. LEWIS, }  
Quebec, January 24, 1891. }

AYLMER.

*"Mr. Clerk of the Assembly,*

*"You will inform the Assembly that, by reason of severe indisposition, I am not able to meet them this day, in Provincial Parliament, and for prevention of all inconvenience, it is my desire that they will adjourn themselves until to-morrow."*

As this proceeding gave occasion at the moment to much angry discussion, and was afterwards made the subject of proceedings, to which I shall presently advert, we may pause to inquire whether it afforded any legitimate grounds of complaint on the part of the Assembly, and I apprehend that it did not. The only alternative, as has been already stated, was between a prorogation and a direction of adjournment to the House itself. Now, the first is the exercise of a higher authority than the last; it is absolute and imperative upon the two branches of the Legislature, and operates a suspension of the power of the Legislature by the sole act of one of its branches. Besides this, it could not regularly have been made from day to day, and it might, therefore, have happened, that a longer interval than was necessary for the re-establishment of his Excellency's health should be taken, to the great inconvenience of the members individually, and to the delay of the public business; or, notwithstanding all proper foresight, too short a delay might have been taken, and then a new prorogation would become necessary, and so on *toties quoties*. On the other hand, the course here pursued was exempt from these inconveniences, adjourning from day to day, the delay in the public business would be mathematically commensurate with the necessity which had given occasion to it; and the

remedy, instead of coming from the sole act of the Governor, came to be the joint act of him and of each of the other branches of the Legislature. Nor does there appear to have been any thing exceptionable in the form in which this measure was carried into effect. To have transmitted the message by letter would have been contrary to usage, and would have been less respectful than the delivery of it in person by his Excellency's Secretary: the message, it is plain, could not go to any other than the Clerk of the Assembly; for the House had not yet received its regular organization, and the Clerk of the Assembly was in legal and actual occupation of the Chair. Nor could the message be delivered at the bar of the House, as was subsequently pretended, or elsewhere than at the chair, where in point of fact it was delivered. Thus far, then, all seems to have been right.

The proceeding which his Excellency was advised ultimately to take is of a more questionable character. The next day a second message was sent by his Excellency to the following effect:—

CASTLE OF ST. LEWIS, }  
Quebec, January 25, 1831. }

AYLMER.

*"Mr. Clerk of the Assembly,*

*"You will inform the Assembly that, still labouring under a severe indisposition, which confines me to my room, and being extremely desirous that the opening of the Provincial Parliament should not be longer retarded, from this cause, it is my desire that the Assembly, when they shall this day adjourn, do adjourn themselves until to-morrow, at the hour of two in the afternoon, when I shall proceed to open the session."*

On the following day the Session was opened, not at the usual place, but in his Excellency's bed-room, he lying in his bed, and it was from this and not from the throne, that the speech was delivered.—Most willingly acknowledging the best intentions on the part of his Excellency, in waiving the established forms, I hesitate about the wisdom of such a proceeding, and very much doubt its legality.

If this course had been adopted in consequence of the idle clamour of the previous day, this afforded no adequate motive for it. He has read but little in the book of human nature and government, who thinks that tranquility is to be bought by submitting to, or in the smallest degree countenancing, unjust pretensions and idle complaints—or who has not yet learned that forms are things. Accordingly, one of the first acts of the Assembly, after it was organized, was to refer these several messages to the Committee of Privileges, implying thus a censure of the proceedings taken by his Excellency. This censure was embodied by the Committee in certain resolutions subsequently adopted by the House. They are to the following effect:—

RESOLUTIONS CONTAINED IN THE FIRST REPORT OF THE  
STANDING COMMITTEE OF PRIVILEGES.

*Resolved*—That the first Session of this fourteenth Provincial Parliament, by proclamation to meet for the despatch of business on the 24th of January last, was not opened on the said day, in the customary form, by reason of the severe illness of the Governor.

*Resolved*—That the effort made by his Excellency to meet the two Houses of Parliament at the Castle of St. Lewis, on the 26th of January, after finding it impossible to open the Session on the appointed day, and in the customary form, is a proof of his desire to communicate with this House, and of his wish not to retard the dispatch of parliamentary business.

*Resolved*—That at the time when this House had not become organized by the choice of a Speaker, no message ought to have been received within the bar; and that this irregular proceeding which took place ought not to be drawn into precedent, or be repeated in future.

*Resolved*—That the written messages of the 24th and 25th of January, signed by his Excellency, being addressed to the Clerk of the House, in the words following: "Mr. Clerk of the Assembly" are irregular and contrary to parliamentary usages, and ought also not to be drawn into precedent, or cited as such hereafter.

Whether these resolutions form any part of the proceedings which afterwards called forth the expression of his Excellency's



admiration, I am not prepared to say. In most other breasts they would assuredly not have this effect.

I have already stated my belief that the opening of the Legislature, elsewhere than in the usual place, was irregular; and it is not merely because this and the other measures just adverted to, hold the first place, in time, that I have first directed my attention to them, but because, also, whatever touches the constitution, occupies the first place in importance. And I shall accordingly proceed to consider such other measures of the late Session of the Provincial Parliament, as are immediately connected with its constitutional powers, and the laws which regulate them.

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## NO. III.

## ENCROACHMENTS ON THE CONSTITUTIONAL POWERS OF THE LEGISLATIVE COUNCIL BY THE ASSEMBLY AND THE GOVERNOR.

En 1791, le corps législatif n'était composé que d'une chambre, sous le nom d'*Assemblée Nationale Législative*, et c'est principalement ou au moins en grande partie de cette imprudente concentration de la puissance en un seul corps, jointe à l'initiative qui lui était exclusivement dévolue, que la France a dû le commencement de cette longue série de malheurs dont les effets et les suites persistent encore sur nous si douloureusement.

TOUTIER.

THE essential character of a free government is, that it is a government of laws and not of men; and whatever false covering may be given to it, or however specious may be the pretexts, wherever the laws are made to bend to the will of individuals, or powers exercised by public bodies which the constitution of the state has not vested in them, or other powers withheld from bodies with which the constitution has clothed them—in that country civil liberty is endangered; nor is it any alleviation of the evil, but on the contrary a high aggravation, if any of the public constituted bodies of the government tamely acquiesce in acts like these. Powers conferred on them by the law and the constitution, are powers not held by them in absolute property to be used or abused at their pleasure; they are powers held by them in trust for the people, for the due exercise of which they are accountable as men, to God, and as citizens to the state.

In the ordinary acts of deliberative bodies, error does not always justify blame; men equally enlightened and equally honest, might and do differ as to the measures most conducive to the public weal. It is otherwise as to the assumption of

powers not given by law, or the surrender of those which are so given: for these things nothing can be said in palliation nor in mitigation; they bless neither him that gives nor him that takes. As a lover of just freedom, it is the duty of every good subject vigilantly to watch the conduct of the public bodies in whom the law has vested the high power of making laws, to satisfy himself of their reverence to that law to which they owe their own political being. After a careful review of the whole of the proceedings of the last Session of the Provincial Parliament, I have been led to the painful conclusion, that the House of Assembly, in various acts during the Session, assumed to itself powers not given to it by the Constitution, and derogatory to the just powers of the Legislative Council. The object of the present paper is to bring under the consideration of the public some instances wherein it is conceived that the Assembly has exposed itself to the foregoing reproach, and before doing so, I beg leave to recall to the recollection of my readers the nature of the functions and powers of the Legislative Council of Lower Canada.

By the Constitutional Act of Lower Canada, the Legislative power is vested in the Legislative Council and the Assembly, concurrently with his Majesty, represented for this purpose, in the colony by his Governor. The Legislative Council has been sometimes erroneously assimilated to the House of Lords in England, the points of difference between which two bodies are so numerous, and so great, that to detail them would be to institute a comparison, which if not odious, might be deemed invidious. But although the members of this body are not lords of parliament, still the functions assigned to them by the Constitution, are of the highest importance, being analogous to those which are exercised by the Senate of the United States of America. The division of the Legislature, it has been well and truly said, "into two separate and independent branches, is founded in such obvious principles of good policy, and is so strongly recommended by the unequivocal language of experience, that it has obtained the

“general approbation of the people of this country. The great  
“object of the separation of the Legislature into two Houses,  
“acting separately, and with co-ordinate powers, is to destroy  
“the evil effects of sudden and strong excitement, and of precipitate  
“measures springing from passion, caprice, prejudice, personal influence,  
“and party intrigue; and which have been found, by sad experience,  
“to exercise a potent and dangerous away, in single assemblies. A hasty  
“division is not so likely to arrive to the solemnities of a law  
“when it is to be arrested in its course, and made to undergo the  
“deliberation, and probably the jealous and critical revision of another  
“and a rival body of men, sitting in a different place, and under  
“better advantages to avoid the prepossessions and correct the errors  
“of the other branch. The Legislatures of Pennsylvania and Georgia,  
“consisted originally of a single House. The instability and passion  
“which marked their proceedings were visible at the time, and the  
“subject of much public animadversion; and in the subsequent reform  
“of their constitutions the people were so sensible of this defect, and  
“of the inconvenience they had suffered from it, that in both States  
“a Senate was introduced. No portion of the political history of  
“mankind is more full of instructive lessons on this subject, or contains  
“more striking proof of the faction, instability, and misery of States,  
“under the dominion of a single, unchecked Assembly, than that  
“of the Italian Republics of the middle ages; and which arose in  
“great numbers, and with dazzling but transient splendour, in the  
“interval between the fall of the Western and the Eastern Empire  
“of the Romans. They were all alike ill constituted, with a single  
“unbalanced Assembly. They were all alike miserable, and all ended  
“in similar disgrace.”\*

It is known to all there are certain funds appropriated for the contingent expenses of the House: and legally, neither the House nor any of its officers have any right to apply them to

\* Kent's Commentaries.

any other purposes; it is a trust fund, in the expenditure of which, doubtless, a certain degree of discretion may be exercised, but still a discretion having certain limits; for it is quite manifest that if the House could legally apply this fund to purposes other than those for which it was specifically appropriated, they would for all the purposes of such application, exercise sole legislative power, to the exclusion of the other two branches of the Legislature. The first instance in which this abuse occurred, was one which at first sight might perhaps excite a smile, but further reflection and the experience afforded by acts similar in principle, but more grave in character, would induce us to consider this aggression with feelings very different from those of levity.

Soon after the close of the last Session, four honourable members of the House, considering the fragility of human life, and desirous of perpetuating to the remotest posterity, the memory of the forms which had enclosed their patriotic souls, had four pictures made of themselves, of three deceased speakers and one ex-living one. The family for which these pictures were intended was not the family of each, any, or all of the pictured men, but was the one great family of Lower Canada; thus far it might be considered as a mere gratuitous testimony of the importance which they considered themselves to have in the eyes of their fellow citizens, and of satisfaction with their own faces—a matter upon which but few men are difficult to please. But the thing did not stop here; these faces were paid for out of the public chest of Lower Canada; they were charged against and paid out of the fund appropriated to defray the contingent expences of the Legislature; they were so paid for, without competent order or authority; they were hung up in the public rooms of the Assembly without its sanction. It forms no part of the subject in hand to make any observations upon the temper of mind which dictated this act, nor to enquire how far the assumption of such a distinction was consistent with the respect which they owed to the House, and to the country, I look at it simply and merely as

an application of monies to objects different from that to which they had been appropriated, an application which the House itself could not legally have made, and an assumption of a power which could only have been exercised by the Legislature. The sum it is true is small, but the precedent is dangerous; and we accordingly find it followed in a resolution of the House, passed on the 27th day of January last, whereby the fund of the contingent expences of the House came to be charged with the postage of all letters received by members during the Session. The resolution bears date the 27th January, 1831, and is as follows:—

*“Resolved,—That the postage of all letters and manuscripts, addressed to any member sitting in the House during the Session, be paid by the Clerk thereof, and charged in the contingent accounts of the House.”*

It may or may not be reasonable that the letters of members should be paid for by the public, but the only power competent to determine that question is the Legislature; and the form of determining it in the affirmative is by passing a law making an appropriation for that purpose.

The House having thus adopted the practice of appropriating monies by votes, the secret could not long be kept that this principle once admitted, and this practice acquiesced in, the power of the Legislative Council would be essentially abridged.

The proceedings to which I shall next proceed, are those relating to the nomination of an Agent to represent the Province in England, and these will abundantly illustrate how fatal the exercise of such a power is to the constitutional powers of the Legislative Council.

For many years past, Bills have from year to year been sent up to the Legislative Council authorizing the nomination of such agent and providing for his remuneration. Differing as the Legislative Council and Assembly have done for years past upon all the leading points of the internal policy of the colony, it is not very surprising that these two bodies could

not be brought to concur in the nomination of any individual for this purpose; and unless they could have met with a living Janus, or a pair of grown up Siamese Twins, the one educated in St. Lewis Street of Quebec, and the other in St. Paul's Street of Montreal, it was quite impossible that they should concur. The Agent would have to state and enforce contrary doctrines and advice upon almost every subject touching the colony. How could either of those bodies consent to a selection made by the other! The Bills were accordingly uniformly rejected by the Legislative Council in all previous Sessions. The Bill in the last Session introduced into the House for this purpose was passed on the 5th of March, and it is therein enacted, "That the Honourable Denis Benjamin Viger is appointed Agent for this Province, for the purpose of supporting such solicitations and representations to his Majesty's Government, as may be confided to him for the welfare of this Province, and that the Speaker and Members of the Legislative Council resident in this Province, be, and are thereby appointed Commissioners for instructing and directing the said Agent in his solicitations and in the management of the matters confided to him, pursuant to such direction and authority as the said Commissioners shall from time to time receive from the Legislative Council and Assembly respectively when sitting.—Provided, nevertheless, that the said Commissioners or any nine of them, of each body, may from time to time during the recesses of the Provincial Parliament, give to the said Agent in Great Britain such further instructions as they shall think fit for the public service of this Province. Provided also, that in case a difference of opinion shall at any time happen between such of the said Commissioners as are members of the Assembly, then and in such case the Commissioners belonging to each of the said bodies respectively, not being less in number than nine, shall be and they are hereby empowered separately to address their Despatches and instructions to the said Agent." The functions thus assigned to the Agent are sufficiently laughable, and could not be well



and honestly performed until he had first learned to serve two masters. This Bill was retained for some time in the Legislative Council, and was ultimately sent down with amendments and with another Bill relating to the same matter on the 30th day of March, being the last day but one of the Session. The amendments consist in making of the Agent instead of an Agent for the Province generally on behalf of both Houses of the Legislature, *an agent for this Province in the United Kingdom of Great Britain and Ireland, especially constituted to act on the part and behalf of the Assembly thereof under such instructions as he may receive from that House according to the provisions in that act contained.* By these amendments the nomination of the Secretary was given to the Governor for the time being, an indemnity was secured to Mr. Gordon the titular Provincial Agent in England; and it was lastly provided, "that nothing in this Act contained shall have any force or effect whatever until an Act shall have been passed by the Legislature of this Province for the appointment of an Agent for the Province in the said United Kingdom, especially constituted to act on the part and behalf of the Legislative Council of this Province, under such instructions as he shall receive from the said Legislative Council."

These amendments were accompanied by a Bill intituled, "An Act for the appointing an Agent for this Province in the United Kingdom of Great Britain and Ireland, to act on the part and behalf of the Legislative Council of this Province."—That no part of the subject may be left incomplete, I give here the heads of the above Bill.—It is enacted by the

1st Clause—That Thomas Hyde Villiers, a member of the House of Commons, be appointed Agent, to act on the part of the Province and of the Legislative Council in making representations, and that a Committee of five, named by the Council when sitting, instruct the said Agent in the management of the matters intrusted to him in such way as they think fit.

2d Clause—Governor to appoint a Secretary to the Committee to have the care of books and papers, and to act under their

orders. Secretary to receive a salary, out of unappropriated monies, under a warrant from the Governor.

3d Clause—Secretary not to deliver out of his custody any documents entrusted to him, except it be to the Governor or to the Legislative Council or Assembly, under an order for that purpose when sitting, under the penalty of £100; but any member of the Legislative Council or of the Assembly at all times to have access to them for the purpose of perusal, making extracts, &c., and Secretary to attend when required for that purpose.

4th Clause—Any two of the Committee to open correspondence from the Agent at the office of the Committee, and there peruse it.

5th Clause—During recess, Committee to meet and answer letters from Agent, or for any other purposes of this Act:— Any two to appoint a day for the meeting of the Committee after fifteen days notice in the Gazette and in the other newspapers at Quebec, for this purpose.

6th Clause—Proceedings of Committee and names of those present at every meeting to be entered in a book kept for that purpose, and the Secretary within the first eight days of each Session to lay before each House a copy of all the entries made since the preceding Session to that day.

7th Clause—Agent's salary £—— Governor authorized to pay, out of unappropriated monies in half year payments in advance, clear of all deduction for remittance, difference of exchange, &c.

8th Clause—A sum of £—— to be at the Agent's disposal for postage, professional advice, and contingent expenses, to be accounted for every six months.

9th Clause—Monies advanced under this Act to be accounted for through the Lords of the Treasury.

10th Clause—Continuance of the Act two years.

11th Clause—Act not to be in force until the Assembly shall have an Agent under Provincial Enactment.

12th Clause—Nor until an indemnity shall be granted to the present Provincial Agent.

All the trouble taken by the Legislative Council in this matter was of little avail, and we come here to an open appro-



priation of the public monies by a simple vote of the Assembly, not only without the concurrence of the other branch of the Legislature, but in relation to a matter sent up by the Assembly to the Council for their deliberation, and actually under their deliberation at the very time that this vote was passed; and to fill up the measure of marvel, the Legislative Council acquiesced by their silence in this assumption of authority on the part of the House. It is true, that after this vote became public, resolutions, similar it is believed to those which were published some time back in Neilson's Gazette, were handed about the Legislative Council, but it is believed, they were not proposed at all, or if proposed, were withdrawn.

The remaining transaction to which I would solicit attention is that relating to the payment of the members.

Lower Canada has ever been honourably distinguished by finding amongst its citizens a multitude of individuals willing to serve their fellow subjects in the Provincial Legislature, without any remuneration for their time or expenses.—Of late years Bills have been from time to time introduced into the Assembly for the payment of the members, and down to the last Session had been uniformly rejected in the Assembly itself.—The measure originally proposed was for the payment of members who might be elected to a new parliament, for it seems too repugnant to fair dealing, that those who had entered upon this public service under a tacit engagement to perform it gratuitously, should pay themselves out of the public funds.—It is material that this homage to true principles should be preserved.

Mr. Neilson, on the 9th February, read the following resolutions, which he proposed for consideration.

The first was

“That it is expedient to give an indemnity to members of this House, for the expenses incurred by them in attending in their places, whilst performing their duty in the House.

Secondly—That such allowance and indemnity should begin after the next general Election.”

How the opinions of the honourable mover came to be changed on this head does not appear; but it does appear, that he did introduce, and carry through the House, a Bill upon principles essentially different from that which he had first suggested. By this Bill the members of the existing Assembly were to be paid.—This is not the place to enter into the consideration of the serious inconveniences that this innovation was calculated to produce; it will be sufficient here to say that it was carried in the Assembly by the majority of twelve, 34 to 22; and was ultimately rejected in the Legislative Council.—It might be supposed that the matter here ended, at least for this Session—not so; in the votes for the Civil List, passed on the 22d day of March, there will be found the following item:—

“£2000 to be granted in order to enable the members of the House of Assembly, who have attended the present Session, to receive an indemnity of ten shillings per day, and four shillings a league to defray their travelling expences, constituting a part of the grand total of £44,549 5s. 11d.”

For the appropriation of which a Bill passed through the House and was taken up to the Legislative Council. The Legislative Council passed that Bill,\* thus retracing its own

\* MOST GRACIOUS SOVEREIGN,

Whereas it is expedient to make an allowance to the Members of the Assembly for their expences occasioned by their attendance at the Session of the Provincial Parliament; May it, therefore, please your Majesty, that it may be enacted, and be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Lower Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, intituled, “An Act to repeal certain parts of an Act passed in the fourteenth year of his Majesty's reign, intituled, “An Act for making more effectual provision for the Government of the Province of Quebec in North America,” and to make further provision for the Government of the said Province.—And it is hereby enacted by the authority of the same, that for and during the second and following Sessions of this present Provincial Parliament, and until the termination of the now next ensuing Provincial Parliament, there shall be allowed and paid to each member of the Assembly, attending at the said Sessions, ten shillings for each day's attendance thereat, and four shillings for each league of the distance between the usual place of residence of such member, and the place at which the Sessions of the Provincial Parliament are held.

steps so far as this item was concerned, and virtually enacting that Bill which it had a short time before rejected.

It is true that it is said that that body passed at the same time certain resolutions, which, that the whole subject may appear before the public, are here given :—

*Resolved*,—That the grant of any aid can only by law be applied to the discharge of the salaries, and the contingent expenses of his Majesty's Government, for which such aid has been asked by his Majesty.

*Resolved*,—That the grant of any aid to his Majesty, by bill or otherwise, exceeding in amount the sum demanded as such aid by His Majesty, is unparliamentary, unconstitutional and unlawful, and consequently that such grant for the difference between the aid demanded and the sum granted as such aid, is null and void.

*Resolved*,—That the application, by any person or persons, of any sum of public money whatever, to any purpose whatever other than the payment of the ordinary contingent expenses of one or other of the Houses of the Provincial Parliament, without the consent of the Legislative Council distinctly expressed in writing by bill or otherwise, would be a contempt of the privileges of this House, subversive of the Constitution of this Province, and a manifest violation of the Imperial Statute of the 31st Geo. III. c. 31.

*Resolved*,—That the application, by any person or persons whomsoever, of any sum of public money whatsoever, to any

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And be it further enacted by the authority aforesaid, that for the purposes of this Act, a sum not exceeding the amount of the said allowances for the whole number of the members returned to serve in the Assembly, shall be annually advanced to the Clerk of the Assembly, by warrant, under the hand of the Governor, Lieutenant Governor, or person administering the Government, out of any unappropriated monies in the hands of his Majesty's Receiver General for this Province, at any time after the opening of each Session of the Provincial Parliament, and the amount of the said allowance to which each member shall be entitled, shall be paid to him by such Clerk, upon an order to that effect made by the Assembly, (on a statement by him submitted of the amount of allowance due to each member, under the provision of this Act,) before the close of each and every Session of the Provincial Parliament.

And be it further enacted by the authority aforesaid, that the due application of the monies advanced pursuant to the directions of this Act, shall be accounted for to his Majesty, his heirs and successors, through the Lords Commissioners of his Majesty's Treasury for the time being, in such manner and form as his Majesty, his heirs and successors shall be pleased to direct.

purpose whatever other than the payment of the ordinary contingent expenses of one or other of the Houses of the Provincial Parliament, in consequence of or under the presence of any vote, resolution, resolve, or address of the Assembly, or of any pretended authority derived from any such vote, resolution, resolve, or address to which the consent of the Legislative Council has not been distinctly expressed in writing, by bill or otherwise, would be a contempt of the privileges of this House, subversive of the Constitution of this Province, and an open violation of the Imperial Statutes of 31st Geo. III. c. 31, and the 6th Geo. III. c. 12.

*Resolved*,—That a copy of these Resolutions be laid before His Excellency the Governor in Chief, and that he be humbly and most respectfully solicited to take such steps as in his wisdom he may deem sufficient to prevent the officers of His Majesty's Government from acting in any way contrary to these Resolutions, or any or either of them, or to the spirit thereof.

I will not permit myself any observations on these resolutions, but will barely say, that either the Law or the Resolutions ought not to have passed a body laying any claim to consistency of public conduct.

Some delay took place in the payment of the members notwithstanding the passing of the Law. This ought not to have happened, for the Governor has no right to suspend or delay the execution of a law; and those who recommended that delay, or perchance refused to pay the members, had done better to have openly resisted its passing in the Legislative Council, than to have prevented or retarded its execution in the antichambers of the Castle of St. Lewis. In both these instances the course pursued by the Legislative Council seems to be as little susceptible of defence as the proceedings on the part of the Assembly which gave occasion to them.

What I have next to add, relates peculiarly and exclusively to the Legislative Council. For several years past Bills have been annually sent up from the Assembly to the Legislative Council, disqualifying Judges to hold seats therein, and the same was done in the last Session. These bills proceed upon the plain principle, that as the Judges hold their seats under

the existing law, the right to sit, nay, the duty even to sit, cannot be taken away from them but by a repeal of the old law, or by a law disqualifying them from sitting. The Governor constitutionally possesses no power over the Legislative Council itself, except that of convoking and adjourning it, and none whatever over its individual members, nor over its economy and internal discipline, yet an order was sent by his Excellency to one of the honourable Judges, a member of the Legislative Council, directing him not to attend that body in his place; and as if that were not sufficient, an honourable member of the Lower House was authorized to inform that House of the order which had been so given, and notwithstanding this manifest infraction of the privileges of the Legislative Council, they were silent to a man.

How such a power should have been used at all, or being used should be quietly submitted to, is a problem, for the solution of which I shall offer some conjectures when I come to inquire into the existing Constitution of the Legislative Council, and into the nature of the functions legitimately belonging to a Colonial Governor.

Having thus pointed out some of the instances in which it appears to me that the rights of the Legislative Council were compromised by proceedings in the Assembly, I shall next proceed to point out some instances, in which, as I conceive, it has exceeded its legitimate powers in matters not immediately touching the Legislative Council, which will complete this branch of the subject.

## NO. IV.

INTERNAL ORGANIZATION AND ECONOMY OF  
THE ASSEMBLY.

*On n'écrit pas dans ce pays. C'est un malheur. Brochure intitulée : Considérations, &c ; p. 1. ligne 1. Montreal, 1816.*

NEXT and hardly inferior in importance to the subject treated of in the last number, are to be held all proceedings in deliberative bodies, which in any way touch their internal organization and economy. The independence necessary for the discharge of the high functions confided to them by the law, excludes all direct foreign control in relation to these matters; but we are not thence to infer that the power of such bodies in relation to them is arbitrary, and carries along with it no responsibility. No human power is above the control of right, and the higher the power exercised is, in a corresponding degree is the responsibility.—This responsibility in a case like the present, not subject to any direct control, is to be enforced by the silent but irresistible power of an enlightened public opinion. Deliberative bodies hold their power from the people, and to the people members are accountable for the just exercise of it. It is from the untrammelled discussion of a free press that public opinion must derive its lights, and must be ultimately formed; and one of the great advantages of a representative government is, that it invites to and facilitates such discussions, and brings to bear



upon all matters of public interest, the united sense of the whole country, which cannot be long led astray by passion or misled by prejudice. It serves also to keep continually present before the minds of the men, to whom either legislative or administrative powers are by law confided, the great truth that all legal power is held only in trust, and is to be exercised in full and open view of those from whom it is derived, for whose benefit it was conferred, subject to the law from which alone it derives its efficacy. In enquiring then into that part of the proceedings of the Assembly during the last Session, which relate to their internal organization and economy, I am at once exercising a right and discharging a duty, and bringing the subject under the consideration of its lawful tribunal.

No deliberative body can carry on its proceedings with order and regularity, without certain established rules and orders; nor when these are once established, ought they to be set aside without great care and reflection, and then directly, not incidentally. The Assembly has such a body of rules and orders, established soon after its creation, and drawn with singular precision and judgment.

The formation of Committees, to whom so large a portion of the power of the House stands delegated, is provided for by the following rule:—

#### COMMITTEES.

Sect. 2.—Resolved, that the mode of appointing a Special Committee, shall be first, to determine the number it shall consist of, then each member naming one which shall be written down by the Clerk. Those who have most voices, shall be taken successively until that the number is completed, and if any difficulty should arise by two or more having an equal number of voices, the sense of the House shall be taken as to the preference; but it shall be always understood, that no member who declares himself, or divides against the body or substance of the bill, motion or matter, to be committed upon any of the readings thereof, can be nominated to be of a Committee upon such a bill, motion or matter.”—*Standing Rules and Regulations of the House of Assembly of Lower Canada,*

*revised and corrected to the end of the third and last Session of the 13th Provincial Parliament inclusive.—Neilson and Cowan, Quebec, 1830.*

The framers of this rule evidently had it in view to render their nominations the nomination of the whole House, and to exclude all possibility of management in the selection. If such a power had been to be vested in any individual, it could only be vested in the Speaker; but as he might be a party man, such a delegation of power would have been injudicious. To have left it afloat to be taken up by any individual in the House who pleased, was evidently altogether without the view of the framers of that rule; if one could do it, so then could another and another, and all. If he acted upon his own sole judgment, then he assumed a power which no standing or ability would justify, and which no patience on the part of the House would long submit to. If, on the other hand, he consulted with others, then the number of those others might be small—they might be united together for the attainment of objects, not the most meritorious—and though probably the most active, might not be the most impartial of its members; and in one word, the views of a party might be consulted, rather than the general interests of justice and of the country. But besides, there would be no adequate guaranty that the nomination would represent the general unbiassed sentiments of the whole House; so too, the mover would be placed in the awkward dilemma of either recommending his own nomination to the House in one or more of these committees, to the prejudice of his modesty, or of passing himself over, and thus depriving the country of services which he at least must have deemed that the House would consider of importance, or they would not have permitted him to select and point out the individuals who were entitled to their confidence. Above all it would lead to a concentration of power unfavourable to the interests of truth and of liberty. Let it be observed also, that these considerations might or might not have had weight before a Committee of the whole House,



sitting to enquire into the expediency of repealing the above rule. So long as that rule subsisted, no other course than that prescribed by it could be lawfully adopted.

The following permanent Committees, consisting each of eleven members, were moved and ordered on the 29th January, viz :—

1st.—A Committee of Privileges and Elections.

2d.—A Committee of Privileges, whereof five to form a quorum, to take into consideration all questions which may arise in the House, and be referred to them relating to grievances, and petitions of grievances.

3d.—A Committee of Courts of Justice, to take into consideration, and report their opinions and observations on all questions which may arise in the House, and be referred to them relating to Courts of Justice and the Administration of Justice.

4th.—A Committee of Public Accounts.

5th.—A Committee of Education and Schools.

6th.—A Committee of Agriculture.

7th.—A Committee of Trade, to take into consideration, and report their opinions and observations on all matters which may be referred to them, relating to Trade, Fisheries and Navigation.

8th.—A Committee of Roads and Public Improvements, to take into consideration, and report their opinions and observations on all matters referred to them, relating to Roads and Bridges, Improvements of Internal Communications, and settlement of Waste Lands, and Reports and Expenditures connected therewith.

9th.—A Committee of Expiring Laws, to enquire into all Laws expired or about to expire, and deemed necessary to be revived, or renewed, or amended.

10th.—A Committee of Private Bills, to take into consideration, examine and report their opinions and observations on all petitions for Private Bills referred to them.

11th.—A Committee of Bills to be engrossed, to examine and report their opinions and observations on all Bills ready to be engrossed, or that have been engrossed.

If in the most ordinary cases the House reserved to itself the direct nomination of its own committees, and excluded its members from any other power in relation thereto, except that of giving an individual vote for one individual of the

committee, and if, as is the fact, any encroachment upon this rule had been looked at with so much jealousy during the Sessions immediately preceding the last, that even in soliciting an addition of members to committees already established, the House would not permit the mover to name in his motion any individual to be added to the committee, but left them to be selected in the ordinary course, it was hardly to have been expected that any individual would have come forward, and have named all the members of all the committees, still less was it to have been expected that the House would have acquiesced in so sweeping a measure as this; yet, upon the occasion of naming these committees to whom so large a power of the House came to be delegated, the new and before unheard of proceeding of motions by an individual member, containing the names of all the members of each of these committees, was submitted to the House and carried. But previous to the passing of these motions the question of the propriety of them was distinctly brought before the House by a motion in amendment, "That the committee of privileges and elections be elected in the usual and customary way," which was lost upon a division of 19 to 46, and a second motion in amendment, "That the House do to-morrow resolve itself into a committee of the whole House to consider the expediency of repealing the 2d section (being the rule above given) of the rule of the House relating to committees, so far as the same concerns permanent committees, and that in future permanent committees be chosen by ballot," which was in like manner lost by a division of 21 to 48.—I apprehend that the foregoing change in the mode of nominating committees is a dangerous innovation; but it is to be borne in mind, that this was the first Session of a new Parliament with increased numbers, and that very many of the members sitting for the first time could not be expected to be familiar with the details of practice of the House.—Notwithstanding this, however, I am persuaded that had longer time been afforded for reflection, the majority of the House would have come to the conclusion, that

the old and now subsisting order for the nomination of committees, acted upon since the first establishment of the Constitution, should be pursued.

The importance of the consequences flowing from the above proceeding can only be fully understood and appreciated by men familiar with the machinery and movements of deliberative bodies.

The subject to which I shall next solicit attention is one easily intelligible to all ; it relates to the expulsion of a member of the House in the last Session, for the third time, and involves an enquiry of the deepest importance, being no less than whether this act of the Assembly was sanctioned by the Law and the Constitution. I need not here premise that to this standard the Assembly is bound to adapt its proceedings.

For the right understanding of the question in all its bearings, it is necessary to go back to the two previous expulsions of the member in question, entering into them no farther than is necessary to elucidate the decision of the House in the last winter.

In the Session of 1829, Robert Christie, Esquire, having been returned member for the District of Gaspé, various subjects of alleged complaint against him having been embodied incidentally in a Report of one of the Committees of the House, together with evidence taken *ex parte* before the Committee reflecting upon his conduct, petitioned the House to be heard at the Bar, and to have an opportunity of examining the witnesses produced against him ; which petition was rejected as contumelious. It is not necessary for the purposes of the present enquiry to enter into any critical examination of the evidence offered in support of the petition, nor into the question, how far it was consistent with principles of justice to deny Mr. Christie the means of confrontation with his witnesses, which even the barbarous criminal codes of continental Europe for the last century gave to all accused persons. For all the purposes of the present argument, the Resolutions framed upon the report of the Committee, and which will be

found in the journals of the House under date of the 14th February, 1829, will be sufficient ; they are as follows :—

1.—Resolved—That it is the opinion of this Committee, that the petition of Robert Christie, Esquire, referred to this Committee is false, contumelious and vexatious, and is an attack by the said Robert Christie against the honour and privileges of this House.

2.—Resolved—That it is the opinion of this Committee, that Robert Christie, Esquire, a member of this House, being Chairman of the Quarter Sessions for the District of Quebec, was commanded by his Excellency the Earl of Dalhousie, Governor-in-Chief of this province, in the course of the year 1827, to prepare and lay before him a list of those persons whom it should appear to him advisable to appoint to the office of Justice of the Peace for the said district.

3.—Resolved—That it is the opinion of this Committee, that the said Robert Christie did in fact prepare the said list and submitted it to the Justices of the Court of King's Bench for the District of Quebec, by order of the Governor-in-Chief, for the purpose of having it approved and signed by them, and that the said Justices refused to approve and sign the said list.

4.—Resolved—That it is the opinion of this Committee, that the said Robert Christie intentionally left out of the said list, by him made, the names of François Quirouet, John Neilson, François Blanchet, and Jean Belanger, Esquires, who had been for many years and then were Justices of the Peace for the District of Quebec, and members of this House, for the purpose of causing them to be deprived of the office of Justices of the Peace, on account of their opinions, and the votes they had given in this House.

5.—Resolved—That it is the opinion of this Committee, that in presenting the said list to the Justices of the Court of King's Bench for the District of Quebec, the design of the said Robert Christie, and the aim of his Excellency the Earl of Dalhousie, were to throw upon the said honourable Justices the responsibility and censure which might attach to the arbitrary and illegal dismissals which they proposed to effect by the new Commission of the Peace and to save themselves harmless.

6.—Resolved—That it is the opinion of this Committee, that the said Robert Christie afterwards laid the said list before his Excellency the Earl of Dalhousie, Governor in Chief of this Province, as a list of the persons with whose names, in the opinion of the said Robert Christie, the new Commission of the Peace ought to be filled up.

7.—Resolved—That it is the opinion of this Committee, that at or about the same time, the said Robert Christie openly and publicly declared his intention of causing the said François Quirouet, John Neilson, François Blanchet and Jean Belanger, to be dismissed from the office of Justice of the Peace on account of their political conduct and the votes they had given in this House, and that the said François Quirouet, John Neilson, François Blanchet, and Jean Belanger were dismissed from the said office because they had voted and presided at Committees in this House at which votes had been passed in opposition to the views of the then Provincial Administration.

8.—Resolved—That it is the opinion of this Committee, that in expressing himself on the subject of the said dismissals planned by him, the said Robert Christie publicly declared that the time was come when no political neutrality would be permitted, when those who were not the friends of the Administration would be considered as being its enemies; and that those who would not support Lord Dalhousie's Administration should hold no place under his Government.

9.—Resolved—That it is the opinion of this Committee, that it did not by law appertain to the said Robert Christie to prepare the said list, and still less to advise the dismissal of his fellow Justices of the Peace, and that he made the said list, and advised the said dismissals voluntarily, and with the criminal intention of restraining and annihilating as far as in him lay, the liberties of the people of this Province, and the freedom of the opinions and votes of this House.

10.—Resolved—That it is the opinion of this Committee, that in consequence of the list prepared by the said Robert Christie, the said François Quirouet, John Neilson and François Blanchet, members of this House, were diamissed from the office of Justice of the Peace by the last Commission of the Peace now in force, in and for the District of Quebec, without any other cause than their opinions and votes in this House: and that such is the public rumour and notoriety, founded chiefly on the declaration and language of the said Robert Christie, as well before as after the said dismissals.

11.—Resolved—That it is the opinion of this Committee, that the said Robert Christie, at the time he prepared the said list, and advised the Governor-in-Chief to the said dismissals, was one of the members of this House, after having been before and up to that time, one of the confidential officers of this House.

12.—Resolved—That it is the opinion of this Committee,

that the said Robert Christie openly threatened to cause to be dismissed from the office of Justice of Peace, and from every other office, all those members of this House who would not support all the measures of the Provincial Government under the administration of his Excellency the Earl of Dalhousie, and pointed out in gross and outrageous language those members of this House whose opinions and votes had been in opposition to the views of the said administration.

13.—Resolved—That it is the opinion of this Committee, that the said Robert Christie took advantage of the opportunities he possessed, in the first instance, as a confidential officer, and afterwards as a member of this House, to become a spy upon the opinions and votes of the members of this House, and did in fact report them to his Excellency the Earl of Dalhousie, Governor-in-Chief of this Province, with a design to irritate his Excellency against those members of this House whose opinions and votes were in opposition to the views of his Excellency, and to induce his Excellency to punish them by arbitrary dismissals from office, and by other abuses of the Royal Prerogative.

14.—Resolved—That it is the opinion of this Committee, that by his report and perverse counsels, the said Robert Christie induced his Excellency the Earl of Dalhousie, Governor-in-Chief of this Province, to abuse the Royal Prerogative, for the purpose of arbitrarily and without any legitimate reason, dismissing the said François Quirouet, John Neilson and François Blanchet, from the office of Justice of the Peace, on account of their votes and opinions in this House; that by his avowal and conversation, he exposed and made public the odious motives of these unjust dismissals; and that by these means the said Robert Christie endeavoured to degrade the Government, to excite feelings of dislike to the authority of the King, and to destroy the confidence of his Majesty's subjects in the Provincial Administration.

15.—Resolved—That it is the opinion of this Committee, that the said Robert Christie is guilty of high crimes and misdemeanours, and is unworthy of the confidence of his Majesty's Government.

16.—Resolved—That it is the opinion of this Committee, that the said Robert Christie is guilty of a high contempt of this House, and is unworthy to serve or to have a seat as a member thereof.

These resolutions were adopted by the House, and were followed by the usual resolution, that Mr. Speaker do issue his warrant, &c. It would be trifling with the understanding



of one's readers to institute any argument to shew that the facts found in the foregoing resolutions constituted no legitimate ground for the expulsion of Mr. Christie. Freed from the tautology and exaggeration of impeachment forms, they amount to nothing more than a finding that Mr. Christie had recommended to Lord Dalhousie to leave out of the list of magistrates four individuals, and that he had been a spy upon the proceedings of the House. As to the first—The merits of the advice must stand upon its own basis ; it might be very good, it might be very bad, very wise or very foolish, very disinterested and magnanimous, or very malicious, without operating any legal disqualification : if we should think the better or the worse of Mr. Christie for it as a man, *in foro conscientia*, it lay not within the competence of any exterior tribunal : but these things are too plain to be insisted upon. The second head of offence is the being a spy upon the public proceedings of a public body : observe here, that it is the right and the duty of every individual to examine those proceedings with lynx eyes ; and I have no hesitation in saying, highly as I esteem representative Governments, that, without this check, they would be the most formidable instruments of tyranny and oppression that the wit of man ever devised.—The resolution relating to this head will stand as a monument of a Legislative Bull not easy to be paralleled.

Mr. Christie having been anew returned by the electors of Gaspé, he took his seat in the following session, whereupon it was moved and ordered :—

“ That the said Robert Christie, Esq., having in his quality of stipendiary Chairman of the Quarter Sessions for the District of Quebec, called in question and counselled the then administration to call in question the freedom of debate in this House, is therefore undeserving of the confidence of the Government, and unworthy to be a Member of this House, and ought not to sit, and cannot sit as a Member.” Whereupon it was ordered that the Speaker do issue his warrant, &c.

The mover was not satisfied with this, but went on to move :—

"That an humble address be presented to his Excellency the Administrator of the Government, representing that Robert Christie, Esquire, having, while he was Chairman of the Quarter Sessions for the District of Quebec, and one of the members of this House, in violation of its privileges, of the independence of its members, and of the liberty of debate in this House, abused his situation by inducing the Earl of Dalhousie, then Governor-in-Chief, to dismiss from the office of Justice of the Peace, several members of this House, on account of their votes and proceedings therein, was for such conduct unanimously declared by this House, on the 14th February, 1829, and again this day declared unworthy of the confidence of his Majesty's Government, and unworthy of serving or sitting in this House, and praying, therefore, that his Excellency will be pleased to refuse to the said Robert Christie, Esquire, all marks of confidence on the part of his Majesty's Government, by dismissing him from any place of honour or profit he may hold during pleasure under his Majesty's Government."

Which last motion was postponed and was not ultimately proceeded upon.

Mr. Christie being returned a third time to the new Parliament, whose first session was had in the last winter, a motion similar to that last given was made and carried; and it is the question of the legality of that decision of the House to which I am now to direct my attention.

Two questions were thus brought under the consideration of the House:—First, Whether the facts found in the resolutions of the 14th February, 1829, were sufficient to render him unfit to sit as a member of the House; and 2d, Whether his expulsion in a previous Parliament operated as a legal disqualification to be elected for or to sit in this new Parliament. I will not add any thing more to what has been said on the first head. On the second, the following observations seem to be sufficiently obvious:—If the party was disqualified to sit, that disqualification must be to be found in some known law or well established parliamentary usage, it not being competent to any one branch of the Legislature to create a disqualification in a subject of the King; the whole burthen



of proof lay then upon those who asserted the disqualification ; and in the absence of any authority whatsoever, the House could not limit the elective franchise of the King's subjects at Gaspé, nor could they deprive a member of the right vested in him to sit and to vote as such ; but conclusive as this negative form of argument was, there was no better settled rule of Law than that the expulsion of a Member did not disqualify him from sitting under a new return.

One of the first cases, is that of Richard Woolastone, to be found in the Commons' Journals of the 20th February, 1698. The entry is as follows :—

"The House, according to order, proceeded to take into consideration the Report from the Committee to whom it was referred to examine the lists of the Receivers, and the names of the Commissioners of the Treasury, Customs and Excise, at the time of making the act made in the 5th and 6th year of his Majesty's reign, for granting to his Majesty certain rates upon Salt and upon Beer, Ale and other Liquors ; and of the present Commissioners ; and Mr. Woolastone attending in his place was heard, and then withdrew.

And a motion being made and the question being put :—

"That Richard Woolastone, Esq., being a member of the House of Commons, and having since been concerned, and acted as a Receiver of the Duties upon Houses, as also upon Births, Marriages, and Burials, contrary to the Act made in the 5th and 6th year of his Majesty's reign, for granting several duties upon Salt, Beer, Ale and other Liquors, be expelled this House.

The motion was carried in the affirmative by a division of 184 to 133, and it was thereupon ordered that Mr. Speaker do issue his warrant."—Comm. Jour. vol. 12, p. 519.

In the list of Members of the House of Commons for 1700-1—Cobb. Parl. Deb. vol. 5, p. 1231—it will be found that this Gentleman was returned anew, and an examination of the Commons' Journals will shew that no attempt was made to expel him, which would doubtless have been done if it had been considered that his previous expulsion had operated a disqualification.

The next case is that of Sir Robert Walpole, which will be

found in the Commons' Journals of 17th Jan. 1711; it is as follows:—

Mr. Walpole was heard in his place.

After which a debate arose in the House, whether Mr. Walpole should withdraw before a question was stated, or any debate had of the matter relating to him.

Whereupon the Journal relating to the Lord Falkland in the year 1693, and also the Journal relating to Mr. Ridge in the year 1710: were read.

Whereupon Mr. Walpole withdrew before any debate was had, or any question proposed, touching the matter relating to him.

A motion being made, and the question being proposed, that Robert Walpole, Esq., a member of this House, in receiving the sum of 500 guineas and in taking a note for £500 more, on account of two contracts for Forage of her Majesty's troops quartered in North Britain, made by him when Secretary at War, pursuant to a power granted to him by the late Lord Treasurer, is guilty of a high breach of trust, and notorious corruption!

An amendment was proposed to be made to the question by leaving out these words, "and notorious corruption," which passed in the negative by a division of 155 to 207.

When the main question being put, it was resolved in the affirmative by a division of 205 to 148.

Resolved—That the said Robert Walpole, Esq., be for the said offence, committed prisoner to the Tower of London, during the pleasure of this House; and that Mr. Speaker do issue his warrants accordingly.

Then a motion being made, and the question being put, that the House do now adjourn. It passed in the negative by a division of 156 to 168.

Then a motion being made and the question being put, that the said Robert Walpole, Esq., be, for the said offence, also expelled this House, which was carried in the affirmative by a division of 170 to 148.

The subsequent circumstances relating to Mr. Walpole are so fully given in a speech of Mr. Grenville, from which extracts will hereafter be given, relating to the case of Wilkes, to which we shall next proceed, that it would be a useless repetition to state them here.

The case of Wilkes then is one, which, however familiar to all men in the slightest degree conversant with the constitu-

tional history of England, is by far of too much importance to be wholly prætermitted. I shall satisfy myself, however, with a very succinct statement of so much of that case as applies to the question under discussion. On the 23d January, 1764, it was resolved,

"That it appears to this House, that the said John Wilkes, Esq., is guilty of writing and publishing '*The North Briton*, No. 45,' which this House has voted to be a false, scandalous and seditious libel, containing expressions of the most unexampled insolence and contumely towards his Majesty, the grossest aspersions upon both Houses of Parliament, and the most audacious defiance of the authority of the whole Legislature; and most manifestly tending to alienate the affections of the people from his Majesty, to withdraw them from their obedience to the Laws of the Realm, and to excite them to traitorous insurrections against his Majesty's Government.

Resolved—"That the said John Wilkes, Esq., be, for his said offence, expelled this House."—*Comm. Jour.* vol. 29, p. 723.

Mr. Wilkes was afterwards elected for the county of Middlesex on the 28th March, 1768; he was expelled on the 3d February, 1769; he was rechosen for Middlesex the 16th day of the same month; his election was declared void and himself declared incapable of being elected into that Parliament on the 17th of the same month; he was again elected on the 16th day of March, when no other candidate appeared, except Mr. Dingley, who had not one vote; his election was again declared void on the 17th of the same month; on the 18th of April he was returned by the Sheriffs as having 1143 votes and Colonel Luttrell only 296. On the 15th day of the same month, the House of Commons voted, "That Mr. Luttrell ought to have been returned," and that gentleman took his seat accordingly. A petition from several freeholders of the county of Middlesex having been presented against Mr. Luttrell on the 29th of April, the House of Commons voted, on the 8th of May, "That Henry Lawes Luttrell, Esquire, is duly elected a Knight of the Shire, to serve in this present Parliament, for the County of Middlesex."

The discussion which these several acts of injustice towards Mr. Wilkes, towards his constituents, and towards the great body of electors of the kingdom occasioned, are familiar to all, and eighteen years after Mr. Wilkes's first expulsion, the House of Commons had the magnanimity or the prudence to recognize the error of their predecessors, and, so far as was in their power, to correct it by their resolutions of the 3d May, 1782, in the following words :—

“ Ordered, That all the declarations, orders and resolutions of this House, respecting the election of John Wilkes, Esquire, for the county of Middlesex, as a void election, the true and legal election of Henry Lawes Luttrell, Esquire, into Parliament, for the said County, and the incapacity of John Wilkes, Esquire, to be elected a member to serve in the said Parliament, be expunged from the Journals of this House, *as being subversive of the rights of the whole body of electors of this kingdom*; and the same were expunged by the clerk, at the table accordingly.”

The illegality of the proceedings had by the House in respect of Mr. Wilkes, are so distinctly stated in a speech of that distinguished statesman, Mr. Grenville, and the evils which would result from the unjust course they were taking, are so plainly portrayed, that I cannot forbear to refer to this interesting document. It is too long for insertion here; some of the more striking passages of it, however, and more particularly that part of it which relates to the expulsion of Mr. Walpole ought not to be omitted.

It is proper to premise that this speech was made upon the occasion of the motion for the second expulsion of Mr. Wilkes, and by a man who had great cause of personal hostility towards that notorious character. It will be recollected that the motion for the expulsion of Mr. Wilkes rested upon several grounds, one of which was the alleged disability arising from his previous expulsion. Now Mr. Grenville in the argument in question contends that the motion was irregular, because it was complicated, and involved several distinct propositions, about which not only there might be, but there

actually was, a diversity of opinion in the house; he examines in the progress of his argument the alleged grounds of disability arising from his previous expulsion. In stating this diversity of opinion he furnishes us with the opinions of Mr. Justice Blackstone and Mr. Justice Nares, (then Mr. Blackstone and Mr. Serjeant Nares) names of no light authority.

"But this mode of proceeding" (alluding to the complication of the motion) (says Mr. Grenville) "is not only new and unprecedented, it is likewise dangerous and unjust. For the proof of it let me recall to your minds what has passed in the course of this debate; one very learned and worthy gentleman (Mr. Blackstone) who spoke early, declared that he gave his consent to this motion for expulsion upon that article of the charge alone which relates to the three obscene and impious libels: disavowing, in the most direct terms, all the other articles; because he thought that the libel relative to Lord Weymouth's letter was not properly and regularly brought before us, and that *Mr. Wilkes having been already expelled by a former Parliament, for the seditious libel of the North Briton, ought not to be punished and expelled a second time, by a subsequent Parliament, for the same offence.* His argument was, that the former House of Commons having vindicated the honour of the King and of Parliament, he hoped this House would not shew less zeal to vindicate the cause of God and of Religion. He spoke with a becoming zeal and indignation, raised, as he told us, by having read some of the wicked and impious expressions contained in the record now upon your table. His opinions, which were soon after followed by another learned gentleman, (Mr. Serjeant Nares) who adopted the same train of reasoning, joined to the serious manner in which he delivered them, seemed to make great impression upon the House; and though I differ with him in his conclusion, yet I agree with him in his principles, and was glad to see this offence treated as it ought to be. For, &c."—*Parl. Deb.* vol. xvi., p. 551.

And afterwards, p. 554, "I have hitherto taken the whole of this complicated charge together, and have shewn the dangerous consequences resulting from it; I will now unravel the web, and consider the different parts of it separately and distinctly. The first which presents itself is the libel relative to Lord Weymouth's letter, which has been christened for this special purpose. It was, &c.

The next article, p. 555, "is that of the seditious libel the *North Briton*, for which the author and publisher were de-

servedly prosecuted, tried and convicted five years ago, in consequence of the unanimous address of both Houses of Parliament. He was likewise expelled by the last House of Commons, for the indignity offered to them by one of their own members, of which they were the only judges, and which they alone could punish; a case so widely different from that of a libel on any particular person or minister of state, that it is quite unnecessary to do more than to mark it out to your observation. For this libel of the North Briton, Mr. Wilkes has been sentenced, and is now undergoing the punishment inflicted on him by law. He has likewise been punished by expulsion from the former House of Commons, for the particular offence committed against them. There is not a rule more sacred in the jurisprudence of this country, than that a man once acquitted or condemned shall not be tried or punished again by the same judicature for the same offence. How many notorious criminals daily escape by the direct observance of this rule; and yet the principle of it is so salutary and so deeply rooted in the minds of men that no one dares to set his face against it, and to avow an intention to break through it. It was but a few days ago that I spoke and voted to restrain Mr. Wilkes from entering into the greater part of his petition, because the subject matter of his complaint had been fully heard, and the parties to it duly acquitted, by the last House of Commons. The House, after long debate, adopted the reasoning, and Mr. Wilkes was restrained accordingly."

"And shall I within the little space of a few days forget every argument which I then used against him, and declare without shame that the same rule of law which was conclusive when urged in behalf of his adversaries, should in his same cause be of no avail when pleaded in its favour? Is this that consistency upon which I and those who hear me are to value ourselves? I have not taken up that sacred principle so lightly, nor will I so wantonly depart from it. Permit me to give you an instance of it. Many years ago a proposition was made to allow of a revision of a sentence of a Court Martial. The question was solemnly argued. I then sat at the Treasury Board with a minister (Mr. Pelham) for whom I had the highest personal regard and respect; and yet in opposition to him, and to the sentiments of more, (Lord Temple and Lord Chatham) with whom I was connected by the nearest ties both of blood and friendship; I repeatedly voted and spoke against that revision, in conjunction with a noble person (Lord Lyttleton) who then sat at the same Board with me, and an honourable gentleman, (General Conway) an officer of the army, who afterwards held the office of one of His Ma-



jesty's principal Secretaries of State, who now hears me, and to whom I appeal for the truth of what I have said upon this subject. Is not this the revision of a sentence given in a former Parliament in order to increase it? And if this motion for the expulsion of Mr. Wilkes, as grounded upon that offence, shall prevail, *will he not be twice expelled and twice punished for one crime by the same judicature*, in direct violation of that salutary principle, to the truth of which we ourselves have so lately assented? The third article, &c."

And afterwards, "But it has been urged, (p. 568) whatever may be the case in point of form, with regard to the several articles contained in this question, whether taken together as an accumulated and complicated charge, or considered separately and distinctly, yet this House must necessarily be the judges, whether any member of their own is or is not a fit person to sit amongst them; and it has been argued, that if the last Parliament thought him unfit, the present has certainly an equal right to adjudge that he is so. It has been asked, what merit has he had since that time to recommend him, and to induce the present Parliament to think him a more proper man to sit amongst them than he was to sit among their predecessors? This would indeed be a conclusive argument, if we really had that discretionary power of excluding all those whom we think improper upon which it is founded. But we have no such general authority vested in us, nor is there a single precedent where we have pretended to exercise it. Whenever this House has expelled any member, it has invariably assigned some particular offence as the reason for such expulsion. By the fundamental principles of this Constitution, the rights of judging upon the general propriety and unfitness of their representatives is entrusted with the electors; and when chosen; this House can only exclude or expel them for some disability established by the law of the land, or for some specific offence alleged and proved. If it were otherwise, we should in fact elect ourselves instead of being chosen by our respective constituents. If I had been one of the electors for the county of Middlesex, I should have shewn by my vote the opinion which I entertained with regard to the conduct and character of Mr. Wilkes, and to the propriety of choosing him a Knight of the Shire for that county. I had not only a right, but it would have been my duty to have manifested that opinion. But when he is chosen and returned hither, my duty is widely different. We are now acting in our judicial capacity, and are therefore to sound the judgment which we are to give, not upon our own wishes and inclinations, not upon our private belief or arbitrary opinions, but upon specific facts alleged and proved

according to the established rules and course of our proceeding. When we are to act as judges we are not to assume the characters of legislators, any more than the Court of King's Bench, who were bound to reverse Mr. Wilkes's outlawry if they found any irregularity in it, though possibly they were convinced in their private opinions that it would have been more beneficial to the State to have confirmed it. If we depart from this principle, and allow to ourselves a latitude of judging in questions of this nature; if we are to admit those whom we think most proper, and except those whom we think most improper, to what lengths will not this doctrine carry us? There never was a Parliament chosen into which there were not some persons elected whom the greater part of the House thought unworthy of that honour. I speak of former Parliaments, and it becomes all to be careful that posterity should not speak still worse of us. Let me suppose for a moment that this were true to a certain degree, even in the present Parliament, and that it were carried still farther from party prejudice, or from motives less defensible, this would indeed be the sure means of purging the House effectually from all ill humours within these walls, and of dispersing them at the same time through every corner of the kingdom. But if this summary mode of proceeding was really meant to be adopted, there was certainly no occasion for our sitting four or five days and nights together, to decide a question, which might as well have been determined in so many minutes. I cannot, therefore, bring myself to think, that any gentleman will avow the proposition to this extent. But perhaps some may wish to shelter themselves under the other part of the argument, and may contend, that a man who has been expelled by a former House of Commons cannot, at least in the judgment of those who concurred in that sentence, be declared a proper person to sit in the present Parliament, unless he has some pardon to plead, or some merit to cancel his former offences. They will find upon examination that this doctrine is almost as untenable as the other. Votes of censure and even commitments by either House of Parliament acting in that capacity only, determine, as it is well known, with the Session. There are, indeed, some instances, where in matters of contempt and refusal to submit to the order of the House, the proceeding has been taken up again in the following session. But to transfer an expulsion from one Parliament to another, and by this means to establish a perpetual incapacity in the parties so expelled, which must be the consequence of it, as this objection will hold equally strong in any future Parliament as in the present; this, I say, would be contrary to all



*precedent and example, and inconsistent with the spirit of the Constitution."*

"I could cite many precedents to prove the first part of my assertion, but one alone will be sufficient for my purpose, because that is so signal, and so memorable in all its circumstances, as to render any confirmation or enforcement of it quite unnecessary. In quoting this precedent, I beg leave to say, that I do not intend to throw any imputation on any person whatever. I neither mean to acquit or condemn those who were parties to it, but merely to state the fact as it appears from your journal, and then to submit the result of it to the judgment of those who hear me. The case I allude to was that of Mr. Walpole, who was afterwards first minister to King George I. and King George II., for the term of twenty years and upwards. On the 17th January, 1711-12, he was voted by the House of Commons guilty of a high breach of trust and notorious corruption, in receiving the sum of 500 guineas, and taking a note for £500 more on account of two contracts made by him when Secretary at War, pursuant to a power granted by the Lord Treasurer; and for this offence he was committed prisoner to the Tower, and expelled the House. He was immediately re-elected, but declared incapable of being chosen during *that* Parliament. However, on the dissolution of it, a year and a half afterwards, he was again chosen into the new Parliament, was admitted to take his seat without the least question or objection on account of his former expulsion, and continued a member of the House of Commons in every subsequent Parliament till the year 1742, when he was created Earl of Orford. It cannot be denied that the offence was in its nature infamous, and such a one as rendered the person guilty of it unfit to be trusted with the power to give or to manage the public money. The same party that expelled him, whose enmity was aggravated by his great talents and knowledge of business, continued equally averse to him and prevalent in the new Parliament; but however desirous they were to get rid of him, and however violent upon many other occasions, yet in the very zenith of their power, they did not dare to set up this pretence, or to urge the expulsion of a former parliament, although not two years before, as a sufficient ground for re-expelling or declaring him incapable of sitting in a new Parliament. If this could have been attempted, every circumstance concurred to make them wish it. The crime itself was breach of trust and notorious corruption in a public officer relative to public money, an offence in the eye of Parliament certainly not less infamous nor less criminal than writing a seditious libel. Few if any were

more obnoxious or more formidable to them than the gentleman who had been the object of their justice or resentment. The heat of party rage had been pleaded in excuse, if not in justification of many extravagancies on both sides, but they thought this measure beyond the mark of a common violence, and therefore resolved not to attempt it. I have said before that it was not my intention to approve or to blame the censure then passed upon that extraordinary man. It was the subject of great discussion and altercation at the time. I do not wish to revive past heats, the present are more than sufficient; and all wise and good men should endeavour by justice and moderation to allay them. Let us, therefore, take it either way. Let us suppose that he was guilty or innocent of the charge to the utmost extent, and then let us consider how the case will apply to that part of the question which is now before us. The crime, as it related to a fraud concerning the public revenue, was certainly under the immediate cognizance of this House, and was perhaps punishable in no other manner. They punished it as severely as they could both by imprisonment and expulsion; the former of which ended in a few months, and the consequence of the latter in a year and a half. If he was guilty of a high breach of trust and notorious corruption, he was certainly very unfit to be invested with the most sacred trust in the kingdom, that of a member of the legislature. Had the question been asked upon that occasion likewise, what merit he had after his first expulsion to recommend him to the subsequent Parliament? The answer must have been that he had persisted in justifying what he had done; that he had appealed not only to his electors, but to the world at large, in more than one printed pamphlet, accusing the House of Commons, which had condemned him, of violence and injustice. With all these aggravations, and with every other inducement, what could have protected him, what could have prevented his re-expulsion but the notoriety and the certainty that such a measure was not consistent with the known law and the usage of Parliament, even when exerted against a guilty and obnoxious man? This is the state of the argument upon that supposition; but if we take the other part of the alternative, and suppose that he was innocent of the charge, the proposition would be much stronger; we must then consider him in the light of a man expelled by party rage, or on worse motives; not for his crimes, but for his merit; not that he was unfit, but that he was too well qualified for the trust reposed in him. What would have been the consequence if this doctrine of transferring the disability incurred by a former sentence to a subse-

quent Parliament had been then established? The public and this House would have been deprived for ever of those services, which, from his knowledge and talents, they had a right to expect, and which they so much relied upon, particularly in the important business of the finances of this kingdom, and that gentleman and his family would have been precluded, irreparably precluded, by an unjust judgment, from those great emoluments and high honours which were conferred upon him by two successive kings as the rewards of his administration. That loss, however, would have been the misfortune of individuals; but a much heavier, a much more extensive misfortune would have befallen the Parliament and the Constitution, if so dangerous a precedent had taken place. An easy and effectual plan would have been marked out to exclude from this House forever, by an unjust vote, once passed, any member of it who should be obnoxious to the rage of party or to the wantonness of power. Let not your prejudices, let not your just resentments against the conduct and character of the man, who is now the object of deliberation prevail upon you to ground any point of your proceedings upon such destructive and fatal principles. Consider that precedents of this nature are generally begun in the first instance against the odious and guilty, but when once established are easily applied to and made use of against the meritorious and the innocent; that the most eminent and deserving members of the state, under the colour of such an example, by one arbitrary and discretionary vote of the House of Parliament, (the worst species of ostracism) may be excluded from the public councils, cut off and proscribed from the rights of every subject of the realm, not for a term of years alone but for ever. That a claim of this nature would be to assure to the majority of this House alone, the powers of the whole Legislature; for nothing short of their united voice, declared by an Act of Parliament, has hitherto pretended to exercise such a general discretion of punishing, contrary to the usual forms of law, and of enacting such a perpetual incapacity upon any individual. There are, indeed, some instances of the latter kind in our statute books; but even there they have been frequently animadverted upon and heavily censured as acts of violence and injustice, and breaches of the Constitution. Let us remember the well known observation of the learned and sensible author of *L'Esprit des Loix*, who states it is one of the excellencies of the English Constitution, of which he was a professed admirer, that "the judicial power is separated from the legislative; and tells us there would be no liberty if they were blended together;

that the power over the life and liberty of the citizens would then be arbitrary, for the judge would be legislator." Shall we then, who are the immediate delegated guardians of that liberty and constitution; shall we set the wicked example and attempt to violate them to gratify our passions or our prejudice? and for whom and upon what occasion? not to preserve the sacred person of the Sovereign from assassination, or his Kingdoms from invasion or rebellion; not to defeat the arbitrary designs of a desperate minister or a despotic Court, but to inflict an additional punishment upon a libeller, who appears, by the question itself, to have been convicted of the greater part of his offences by due course of law, and to be in actual imprisonment at this moment, under a legal sentence pronounced by the supreme court of criminal justice in consequence of that conviction. Can we say that there are not laws in being to preserve the reverence due to the magistrate, and to protect the dignity of the Crown from scandalous and seditious libels? are they not sufficient, if temperately executed, to punish and deter the most daring from the commission of those offences? If they are, for what purpose is this application? If they are not, can the proposition now made to you be deemed the proper or effectual method of enforcing them?"

The last case in order of time is one which has occurred within our own day—it is the case of Lord Cochrane.

Lord Cochrane being then a member of the House of Commons, was indicted in the King's Bench, tried and convicted of a conspiracy, an offence which carries along with it infamy, and renders the person convicted of it incompetent to be heard as a witness in any of the King's Courts. This conviction was complained of by Lord Cochrane, with what reason is altogether foreign to this enquiry. He was, in consequence, on the 5th July, 1814, expelled the House of Commons; and was returned anew to the same Parliament, and took his seat on the 3d July, 1815.—*Parl. Deb.*, vol. xxxi. p. 1074.

There can be little doubt that, obnoxious as Lord Cochrane then was to the men in power, a second expulsion would have been moved, if it had been conceived that his first expulsion operated a disqualification. No such motion was made.

After such an overwhelming weight of reason and of authority, the question naturally arises, on what grounds could the House of Assembly, in the last Session, order the expulsion of Mr. Christie. The only light that can be afforded upon this question is to be derived from the speeches of the members who supported that measure, and these I give without comment:—

“Mr. MORIN said, he only wished to consider the question as it appeared on the journals, which were our guides. Mr. C. was condemned for a contempt of this House; and members do not seem to pay attention to what they themselves pronounced, namely, that he was unworthy of the confidence of Government, and unworthy of sitting in this House. A man that is declared unworthy, is not unworthy only for a day, but must be always unworthy. That this is a new Parliament makes no difference; no more than it would in a Court of Justice make any difference in the case of a man convicted on sufficient proof; when new judges were appointed to preside, he could not bring his case forward again. As for disfranchising Gaspé, this measure is so far from taking away the elective franchise, that it is confirming the rights and privileges of all—as soon as the House is organized, it becomes seized of the rights of the electors, and seized of its own rights. The House had declared that he had invaded the privileges of the House—attempted to controul the freedom of debate; and had thus attacked the existence and independence of the House; by which he tried not only to destroy the House, but to destroy the rights of all the electors. We, therefore, cannot keep in our bosom a man like that—we cannot re-admit him, unless the resolutions for his expulsion are rescinded; and we must still declare him incapable and unworthy of sitting. Members should recollect that it was not a pardon that was required of the offence, but an absolution, a clearance. As to precedents, let it be shewn that there has been a parallel case, and that members have been expelled in England, for infringing the political rights of members while sitting in the House. It has been said that the decision of one House is not that of another; but if that be admitted, all our rules would have to be re-established every Parliament. We must maintain their inviolability, as well as the moral independence of the House. I do not say that the Member for Gaspé should be driven back by the Serjeant at Arms; but I say it is the



duty of this House, in order to preserve the rights of all, to conform to the vote of censure before passed, which is a justice the House owes to itself.

"Mr. DEMERS enquired whether the learned gentleman who spoke last meant to say that Mr. Christie would be deprived of his right of citizenship by being excluded from this House. He would possess those rights as much when he was outside the bar as within it. He might when outside of the bar have his *Habeas Corpus*, as well as inside. He may come here like other citizens, and hear our proceedings. To say so was to say that all who are not inside our bar are deprived of the rights of citizens—yet no one dare say that those respectable citizens then at the bar were deprived of their rights of citizens.

Mr. L. LAGUEUX said, I do not pretend that we are bound to go by the decisions of the last Parliament, but I say that the same reasons and the same dangers exist now as then; though we may not be bound by the same resolutions, we are bound by the same motives of prudence, policy, and justice. The representatives of the people are the same here as there—jealous of our liberties—and cannot but come to the same decision. The same people who decided by their representatives then, are here present by their representatives. It has been said, a punishment cannot be twice inflicted for the same offence—but this is not a punishment, it is a censure—and the consequences are that future confidence is withdrawn. Mention has been made both of expunging the entries, and of absolution from the offence; but neither can be done. It remains the same as in 1829. The *corps de delit* remains. We do not want to be convinced of it, to see all the particulars of the progress; all we have to do with is the record of the judgment—the conviction is sufficient. Had any one shown that in 1829 we were wrong, it might be otherwise; but as long as that conviction is recorded, we have no occasion for other proofs.

"Mr. QUESNEL said, that if any one could produce but one similar instance of the political crime for which Mr. Christie had been expelled, he would submit. But all the precedents were for different matters. This was a *delit unique*, and could not but be visited as such. He wondered at the honourable member for the Lower Town taking the present course, as on the former occasion he had expressed himself very differently."

I have thus, so far as in me lay, put before the public all the materials necessary to enable them to come to a correct conclusion; and I have been more particular, not only by reason

of the intrinsic importance of the subject, but also because the district of Gaspé having, with a very becoming spirit, (and I say so without any reference to the merits or demerits of the object of their choice, but solely in reference to the maintenance of their own elective franchise, and in that, the liberties of all the electors of the Province,) re-elected Mr. Christie; and as the question may thus be anew brought under the consideration of the Assembly, it is of the last degree of importance that a right and sound judgment should be come to thereupon.

*Division on the Expulsion of Mr. Christie.*

YEAS.—Archambault, Beaudet, Blanchard, Boissonnault, L. Bourdages, R. S. Bourdages, Brooks, Bureau, Cazeau, Corneau, Courteau, Demers, Deschamps, Dessaulles, Dewitt, P. A. Dorion, Dumoulin, Fortin, Guillet, Heney, Joliette, Knowlton, Lafontaine, Lagueux, Malhiot, Methot, Morin, Mousseau, Neilson, Noel, Panet, Proulx, Rochon, Scott, Thibaudeau, Trudel, Turgeon, Valois, Viger, Wurtele, Quesnel—41

NAYS.—Baker, Baxter, Bedard, Caldwell, Casgrain, Clouet, Cuvillier, Deligny, De Montenach, De St. Ours, Duval, Dionne, Fisher, Goodhue, Heriot, Hoyle, Huot, Larue, Laternière, Lee, Leslie, Letourneau, Peck, Stuart, A. C. Taschereau, Taylor, Wright, Young—28.

*Division on the motion that the Committee should be named in the ordinary way.*

YEAS.—Boissonnault, R. S. Bourdages, Caldwell, Christie, Corneau, Courteau, Deligny, De Montenach, Dionne, Dumoulin, Fisher, Heriot, Huot, Laternière, Letourneau, Stuart, A. C. Taschereau, P. E. Taschereau, Wurtele—19.

NAYS.—Archambault, Baker, Baxter, Beaudet, Bedard, Blanchard, Louis Bourdages, Brooks, Bureau, Casgrain, Cazeau, Cuvillier, Deschamps, De St. Ours, Dessaulles, Dewitt, P. A. Dorion, Fortin, Goodhue, Guillet, Heney, Hoyle, Joliette, Knowlton, Lafontaine, Larue, Lee, Leslie, Malhiot, Methot, Morin, Mousseau, Neilson, Panet, Peck, Quesnel, Quirouet, Rochon, Taylor, Thibaudeau, Trudel, Turgeon, Viger, Wright and Young—45.

## NO. V.

INTERNAL ORGANIZATION AND ECONOMY OF  
THE ASSEMBLY.

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Hoc volo, sic jubeo, sit pro ratione voluntas.

JUVENAL.

CAR TEL EST NOTRE FLAMBEAU.

*Ordonnances des Rois de France.*

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## THE SUBJECT RESUMED AND CONCLUDED.

THE most general division of governments, and of the most ancient too, is into governments of law and governments of will. That form of government known by the name of a tyranny is but one species of the latter description of governments. History affords us many examples of aristocracies not restrained by law, and subsisting for considerable periods of time—so also of democracies; but the duration of these last has, from obvious and permanent causes, been so short, that they have been looked upon as transitions from one to another settled form of government, rather than as being themselves entitled to the name of a government.

In governments of law, the assumption, by any body in the state, of power not given to it by the law, is evidently subversive of the principle of the government.

In a Constitution like our own, composed of three separate and independent branches, the assumption of such power is dangerous in any of the component branches, but in none so dangerous as in the popular branch. The irresponsibility belonging to large majorities, the passion to which all popular bodies are liable, the confidence which the people naturally place in men selected from among themselves, and by them-



selves, as the guardians of their rights, joined to the difficulty of restraining any abuse committed by them, all contribute to render encroachments of this body upon the Law and Constitution particularly alarming.

In the previous numbers I have pointed out some of what I deemed encroachments of this character, and have now to add to them a plain, open and undisguised assumption of legislative power, to the exclusion of the powers vested by the Law and the Constitution in the King's Majesty.

The Constitutional Act of these Provinces, 31st Geo. III. c. 31, declares who shall be qualified to sit as Members of the Assembly in the following three clauses:—

XXI.—Provided always, and be it enacted by the authority aforesaid, that no person shall be capable of being elected a Member to serve in either of the said Assemblies, or of sitting or voting therein, who shall be a Member of either of the said Legislative Councils to be established as aforesaid in the said two Provinces, or who shall be a Minister of the Church of England, Priest, or Ecclesiastic, or Teacher, either according to the rites of the Church of Rome, or under any other form or profession of religious faith or worship.

XXII.—Provided also, and be it further enacted by the authority aforesaid, that no person shall be capable of voting at any election of a Member to serve in such Assembly, in either of the said Provinces, or of being elected at any such election, who shall not be of the full age of 21 years, and a natural born subject of His Majesty, or a subject of His Majesty naturalized by Act of the British Parliament, or a subject of His Majesty, having become such by the conquest and cession of the Province of Canada.

XXIII.—And be it also enacted by the authority aforesaid, that no person shall be capable of voting at any election of a Member to serve in such Assembly, in either of the said Provinces, or of being elected at any such election, who shall have been attainted for Treason or Felony, in any Court of Law within any of His Majesty's Dominions, or who shall be within any description of persons disqualified by any Act of the Legislative Council and Assembly of the Province, assented to by His Majesty, his Heirs, or Successors.

It will be seen that the above provisions of the Statute do not create any disqualification to sit and vote, in persons accepting offices of trust and profit after their election. Under the Statute 6th Anne, c. 7, and 1st Geo. I., c. 56, no person having a pension under the Crown, during pleasure, for any term of years, is capable of being elected or sitting as a Member of the British House of Commons. So, too, by the former of these Statutes, if any member accepts an office of profit under the Crown, which was in existence prior to 1705, except an Officer in the Army or Navy accepting a new commission, his seat is void, though such member is capable of being re-elected.

These provisions, it is well known to those in the slightest degree conversant with constitutional history, were introduced to limit the great and increasing influence of the Crown in the Commons of Great Britain, derived from its enormous patronage. The situation of the Crown in its *Colonial possessions* is, as we all know, very widely different from this. I am not aware that, in the British Colonies adjoining to us, or in the old British Colonies, it was ever found necessary to extend to them the provisions of the above Statute of Anne. This at all events was quite clear, that if the provisions of that Statute were to be extended to this Colony, it could only be done here as it had been originally done in England, by an Act of the Legislature; and such, at the outset, was the understanding of the majority of the House who favoured this measure, and of the Member who introduced it. The first mention we find of the subject is in the Journals of the Assembly of the 17th March, 1825.

The Resolution of the House is to the following effect:—

Resolved,—That it is expedient that *it should be enacted*, that if any person being chosen a Member of the House of Assembly shall accept of any office of profit from the Crown, or accept as a Commissioner, or otherwise, any appointment from the Crown, whereby he shall become accountable for any public money during such time as he shall continue a Member, his election shall be void, and a new writ

shall issue for a new election, as if such person so accepting was naturally dead ; provided, nevertheless, that such person shall be capable of being again elected, as if his place had not become vacant as aforesaid.

A Bill framed upon the principle of the foregoing Resolution was introduced into the House on the 8th day of February, 1826, passed in the same Session, and carried up to the Legislative Council, where it appears to have been rejected ; and I must say I think rightly rejected. A similar Bill was introduced and passed in 1827, and met with the same fate in the Legislative Council. It was in the summer of the following year that the Report of a Committee of the House of Commons upon the affairs of Canada was published ; and one of the grounds of complaint against the Legislative Council was the repeated rejection of, or the refusal or neglect to proceed upon, certain specified Bills, and upon other Bills qualified as necessary, sent up by the Assembly to the Legislative Council. The course which the Legislative Council pursued upon the occasion of this complaint is not perfectly intelligible to plain unlettered common sense, and deserves particular attention hereafter when we come to consider the constitution of that body. In 1828, a similar Bill being sent up to the Legislative Council, was, in pursuance of the new course adopted there, passed by that body ; although they had twice previously rejected its principles, as containing an important innovation in the Constitution of the Colony. It was reserved for the signification of the Royal pleasure. The Constitutional Act allows two years for the expression of that pleasure. The words of the clause relating to this matter are as follow :—" That no such Bill, which shall be so reserved as aforesaid, shall have any force or authority within either of the said Provinces respectively, unless His Majesty's assent there-to shall be so signified as aforesaid, within the space of two years from the day on which such Bill shall have been presented for His Majesty's assent to the Governor, Lieutenant Governor, or person administering the Government of such

Province." Yet, in the session of 1829, a new Bill, of a similar purport, was introduced and passed by the Assembly. It does not appear to have been acted upon with effect in the Legislative Council; the Members of that body probably felt the indecorum of passing anew a Bill actually under the consideration of His Majesty within the time which the law had allowed for the expression of his assent or dissent. However that may be, various proceedings were had in the Assembly respecting the Bill after it had been sent up to the Legislative Council, and respecting the proceedings there had upon it. I give the entries of the Journal of the Assembly, in 1829, upon the last head, without comment.

"On the 16th January, Mr. Neilson, from the Special Committee appointed to search the Journals of the Legislative Council, as to what proceedings are therein with relation to a Bill sent from this House to the honourable the Legislative Council, intituled, "An Act for vacating the seats of Members of the Assembly accepting offices of profit, and becoming accountable for public money," and to make report thereof to this House—reported that the Committee had searched the said Journals accordingly, and had taken copies of what proceedings are therein in relation to the said Bill, and he read the Report in his place, and afterwards delivered it in at the Clerk's table, where it was again read as followeth: "*Wednesday, 3d December, 1828.* A Message from the Assembly by Mr. Neilson, with a Bill, intituled, "An Act for vacating the seats of Members of the Assembly accepting offices of profit, and becoming accountable for public money."—This Bill was read for the first time.

"Friday, 5th December, 1828.—*Hodie 2d vice lecta est Bulla*, intituled, "An Act for vacating the seats of Members of the Assembly accepting offices of profit, and becoming accountable for public money."—It was moved, That the said Bill be committed, and referred to a Committee of the whole House, on the 1st day of August next.—Moved in amendment, To leave out the words, "first day of August," and to insert "fifth day of January next." It was resolved in the affirmative."

In 1830, the Bill was anew sent up to the Legislative Council, and was passed by that body, and again reserved for the

Royal Assent.—This brings me to the proceedings in 1831, which I have no hesitation in qualifying as an illegal usurpation of authority on the part of the Assembly, to the exclusion of the constitutional rights of His Majesty. Let the following Resolutions be read, which will be found in the Journals, under date of 15th February, 1831 :—

“The order of the day for the House in Committee on the entries in the journals of this House, relating to Members accepting offices of profit, and becoming accountable for public money, being read :—The House accordingly resolved itself into the said Committee : Mr. Gaillet took the chair of the Committee, and after some time spent therein, Mr. Speaker resumed the chair, and Mr. Gaillet reported that the Committee had come to several Resolutions, which Resolutions were again read at the Clerk's table, and agreed to by the House, and are as followeth :—

Resolved,—THAT UNTIL SUCH TIME AS THE ROYAL ASSENT SHALL BE GIVEN TO A Bill conformable to a Resolution of this House of the 17th March, 1825, for vacating the seats of Members accepting offices, and similar to the Bills passed by this House in the years 1826, 1827, 1828 and 1830, the second and fourth of which were RESERVED FOR THE SIGNIFICATION OF HIS MAJESTY'S PLEASURE, the seat of any Member of this House who shall accept of any office or place of profit under the Crown in this Province, or become accountable for any public money hereafter appropriated within this Province, *shall, by this acceptance, be deemed by this House to be vacant, and a new writ shall be issued for a new election, as if such person so accepting was naturally dead ; nevertheless, such person shall be capable of being again re-elected, and of sitting and voting in this House, as if his seat had not been vacated as aforesaid.*

Resolved,—*That any Member of this House sitting and voting therein after such acceptance, be expelled this House.\**

\* It may not be amiss here to insert the Resolutions of the Assembly for the nomination of Mr. Viger, as Agent, &c., which have been adverted to in a previous number, and which proceed upon the same principle, though not upon the face of them, carried to the same extent as those in the text.

Monday, 29th March, 1831.—Resolved, that in the present state of the public affairs of this Province, it is indispensably necessary that some person, having the confidence of this House, should proceed forthwith to England, to represent to His Majesty's Government the interests and sentiments of the inhabitants of the Province, and support the Petitions of this House to His Majesty and both Houses of Parliament.

If the fact heretofore adverted to left any doubt of the assumption of legislative power by the Assembly in the shape of votes, I apprehend that these Resolutions will remove that doubt from the minds of the most incredulous.

In one respect, the framer of these Resolutions was wise; he has not put his name to them, but leaves them as a report of the House in Committee, generally, without taking to himself the responsibility of a measure in its principle subversive of the Constitution and of all law. The history of the old British Colonies, agitated as they were, contained, so long as they acknowledged their Colonial dependence, no act like this. We find a parallel to it—and where shall we find it? we must go back to the *Long Parliament*, and we all know what the course there pursued ended in. Let it be observed, too, that these Resolutions were passed without a division; and purport to be, therefore, the unanimous sentiment of the House. Was it then, one naturally asks, the intention of that body to divest the Crown of its just rights?—I should be wanting in justice if I did not say, that no such intention did exist in a very large majority of the House. It is not the less true, however, that such is the direct consequence of their act.—Whence, then, may it be asked, did it proceed? The answer is plain—from an overweening confidence in a few individuals, who, neither from their knowledge or their discretion, are entitled to it.

If I am correct in the view which I take of this vote, there remains a problem of much more difficult solution.—How came it that the Nobleman who is at the head of this Go-

**Resolved,**—That in the event of the Bill sent up by this House to the Legislative Council, on the 5th instant, not receiving the concurrence of that House in the present Session, the Honourable Denis B. Viger, Esquire, Member of the Legislative Council, named Agent of the Province in the said Bill, be requested to proceed to England without delay, for the purposes mentioned in the foregoing Resolution.

**Resolved,**—That it is expedient that the necessary and unavoidable disbursements of the said Denis Benjamin Viger, for effecting the purposes aforesaid, not exceeding £1000, be advanced, and paid to him by the Clerk of this House, out of the contingent fund thereof, till such time as the said disbursements can be otherwise provided for.



vernment, and who is especially charged with the maintenance of the King's power and dignity, should have felt himself called upon to express his admiration at the conduct of a body who had committed this aggression upon both. I leave it to those to whom are divulged the *arcana imperii*, to explain this difficulty.

There remains one other branch of the general subject at the head of this paper, upon which it is very desirable that information should be had; but which, from the want of that information, it is not in my power to enlarge upon.

The annual expenditures of the two Houses of the Provincial Legislature are very considerable. The public opinion can exercise no controul over them, from the circumstance of the accounts not being published. Of late years, the expenditures have been considerably augmented by allowances to witnesses on Petitions of Grievances. In one instance, as much as £120 was allowed to one witness; and the costs so incurred during the Session of, I think, 1828-9, upon a single Petition of Grievances, amounted to between £600 and £700. Some witnesses one sees as regularly about a fortnight after the opening of the Session, as swallows in the spring; and although they do not last quite so long, yet they hardly leave Quebec before either the House or the roads break up. This is a great evil, and the public ought to be enabled to judge of its extent by having not only this, but all the other items of expenditure of the one and the other House, rendered public by means of the press. It is altogether ridiculous that bodies, whose duty it is to check all other public expenses, should be left uncontrolled by public opinion in their own.

I have now to enquire, by what steps, on other matters, the House was gradually led, during the last Session, to the climax of the foregoing Resolutions of the 15th February, 1831. This is partly explained by facts already referred to.—I shall try to continue the explanation in my next numbers.

## NO. VI.

ON THE FIRST REPORT OF THE COMMITTEE OF  
GRIEVANCES.

Quibus in controversiis cum sepe a mendacio contra verum homines stare con-  
suescerent, dicendi assidua aluit audaciam, ut necessario superiores illi propter  
injurias citius resistere audacibus, et opitulari una quaque necessarius cogeretur.  
Itaque cum in dicendo sepe par, nonnunquam etiam superior visus esset  
is, qui, omisso studio sapientie, nihil sibi præter eloquentiam comparasset, fiebat,  
ut et modestioris, et suo judicio, *dignus*, qui rempublicam gereret, videretur.  
Hinc minime non injuria, cum ad gubernacula republicæ, temerarii, atque  
audaces homines accesserant, maxima ac miserima *navis fragia* fiebant.

CIC. DE INV.

I AM far from judging so harshly of the political character of  
lawyers as the great master of Roman eloquence. In the  
governments of law of modern days, those men who make of  
the law their peculiar study, must and ought to have great  
influence in the public deliberations of their country. But  
the study of the law is proverbially of great extent, difficulty  
and complexity, even when that science is applied to the  
controversies of private individuals. Its difficulty and im-  
portance grow proportionably when we use it as a standard  
of public rights, and seek therein those great conservative  
principles of social order whereby the political fabric is kept  
together and maintained. The knowledge of these, and a just  
application of them, require more study than youth can have  
afforded, and an experience which age only can confer.

It is not the least of the evils arising from the novel and  
unprecedented mode in which the committees generally of the  
Assembly were nominated in the last session, that, in conse-  
quence of it, the senior members of the profession belonging



to the House were, with one solitary exception, excluded from the Committee of Grievances—a committee where their services, knowledge, and discretion were so much called for—and their places supplied by young gentlemen who had at a comparatively very recent period entered into the profession; and who, whatever might be their individual merits, had not yet gone through the ordeal of a long practice. The Chairman of the Committee himself had but very shortly before come out of an Advocate's office, and had not yet had time to make himself known in the courts. Under such auspices, it required no peculiar sagacity to anticipate that the proceedings of the committee would be distinguished rather for youthful violence than for sober judgment; and when these anticipations came to be realized, one could not but feel that if the youth of these parties might be considered as an alleviation of their errors, it constituted no apology for the honourable member who, uncalled, had volunteered to guide the choice of the House in the selection of the members of all the standing committees.

An examination of the first report is calculated to afford a salutary lesson of care and deliberation to the youthful members of the committee, and an useful warning to them against passion and precipitation, whilst it may at the same time serve to show to the House itself the great dangers incident to the neglect of their own rules, and to the delegation to one or to a few individuals of powers which those rules reserved to the House itself.

The first report of the Committee of Grievances relates exclusively, to the notice from the Provincial Secretary's Office of the 15th day of December, 1830, whereby "Persons in this Province holding commissions during pleasure under his Majesty's Provincial Government, which, at the time of the demise of his late Majesty George the Fourth, were in force, and will continue to be so under the statute in this behalf provided, till the 26th instant, are notified, that their new commissions, rendered necessary thenceforward by his late

Majesty's demise, will be delivered to them on application at this office," and to the proceedings of the public authorities in relation thereto.

Before entering into the considerations of public law applicable to the case, it will be well to put our readers into possession of the whole of the proceedings of the Assembly, and at the Castle, down to the making of the report. On the 28th day of January, 1831, Isidore Bedard, Esquire, one of the members of the Assembly, presented a petition to the House on the behalf of Edward Glackmeyer, Esquire, a Notary Public, and one of the copying Clerks of the House, complaining of his being required to sue out a new commission as a Notary Public.\*

In consequence of a message from the House relating to the subject of the new commissions, his Excellency was pleased to send down to the House the following message, bearing date the 9th February, 1831 :—

"In compliance with the request of the House of Assembly expressed in their address of yesterday, the Governor in Chief transmits herewith a certified copy of his Majesty's proclamation, bearing date at St. James's, the 27th day of June last : and being desirous of making the House of Assembly acquainted with the whole of the circumstances connected with the recent renewal of commissions held under his Majesty's Government in this Province during pleasure, he informs the House, that about the middle of the month of December last, it was suggested to him, (not officially, or by any one connected with this Colony) that it behoved him to consider whether a renewal of such commissions might not become necessary by the non-arrival of renewed commissions from England, previous to the expiration of six months, dating from the demise of his late Majesty. In consequence of this suggestion, the Governor in Chief directed the Executive Council to assemble; when it was resolved, (his Excellency being present) to refer the question to the judges and law of-

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\* The Committee has omitted to publish this petition in the appendix to their report, and also to state what the prayer of it was in the body of the report; so that I am only enabled to give a general description of it— which, upon the motion of Mr. Bedard, was referred to the Committee of Grievances, of which he then was, or soon after became the chairman.

icers of the crown for their opinion. With the exception of two of the judges, who stated that they did not consider themselves justified in pronouncing any opinion on the subject, the judges and law officers of the crown were unanimous as to the necessity of issuing the new commissions : and the Governor in Chief, acting in accordance with their opinions, directed the issue of the new commissions accordingly. The view of this subject taken by the judges and law officers of the crown of this Province, appears to be fully borne out by the tenor of the following extract from a letter addressed to the Governor in Chief, by Mr. Hay, Under Secretary of State for the Colonial Department, dated the 8th December, 1830, and received on the 7th ultimo :—"I am directed by Lord Goderich to transmit to your Lordship herewith renewed commissions for the judicial establishment of your government, which his Majesty's accession to the throne has rendered necessary. The renewed commissions for the civil establishment, which may be required, will be forwarded to you as soon as they shall be prepared."—In regard to the copies of any opinions in possession of the Government of this Province, on the subject of the renewal of commissions held under his Majesty's Government in this Province during pleasure, the Governor in Chief has to observe, that the only documents answering to the above description in his possession, are the opinions of the judges and law officers of the crown above alluded to ; and to the production of such documents he entertains strong objections, unless required for some object of great public interest. The House of Assembly can alone form a judgment of the magnitude and importance of the object which they have in view, and whether the production of the documents in question is necessary to the attainment of that object ; and the Governor in Chief having put the House of Assembly in possession of his sentiments, in regard to the production of these documents, has only to add, that if the House of Assembly shall think proper to apply for them, they shall be produced."

The concluding paragraph of this message cannot escape notice ; his Excellency is therein pleased to say that the House of Assembly alone can form a judgment of the magnitude and importance of the subject which they had in view. Now, with all possible deference to his Excellency, I apprehend that the House of Assembly has no exclusive power to form judgments upon public objects. I apprehend that no

other objects could be presumed than those which appeared upon the public proceedings of the House; and that, with respect to these, the House neither had or ever claimed any exclusive power of judging; and that circumstances might arise, and in point of fact did arise, wherein his Excellency, in the exercise of the high trust confided in him, was called upon to judge, and to judge for himself, and upon his own responsibility. I advert to this now, not for the sake of making a captious objection, but as being the first indication of an erroneous view of his own constitutional duties and powers on the part of his Excellency, which I shall hereafter be required to enlarge upon. His Excellency, in the last paragraph but one of this message, informs the House that he entertains strong objections to the production of the opinions of the judges and law officers of the crown, unless required for some object of great public interest; and concludes the whole message by saying, that having put the House of Assembly in possession of his sentiments in regard to the production of those documents, he has only to add, that if the House of Assembly should think proper to apply for them they should be produced.—The second day after the receipt of this message, (the 11th February, 1831) the following resolution was come to by the House:—

“Resolved,—That an humble address be presented to his Excellency the Governor in Chief, praying that his Excellency will be pleased to cause to be laid before this House copies of any opinions in the possession of his Majesty's Government in this Province, relating to the renewal of commissions held from his Majesty's Government in the said Province during pleasure, which his Excellency may deem proper to be communicated, and also of all other proceedings which may have taken place in respect of the renewal of commissions.”

In the propriety of this resolution all must concur. The opinions of public officers given officially upon public affairs are public property; and, however much in the ordinary

course of life we may be disposed to yield to the private inclinations of those about us, no discretion, founded upon the mere personal inclination of an individual, however exalted in rank, can or ought to influence men in the discharge of a public duty.—One does not very well see the motives of his Excellency in expressing his disinclination to communicate these documents to the House; and one may be permitted to regret the expression of them, as being calculated to produce an impression that there were reasons for concealing these documents, when in truth no such reasons could possibly exist. His Excellency, anxious, no doubt, to make up for the delay which his scruples to transmit these public papers had occasioned, condescended, on the very day after the second message was sent up to him, to step out of the ordinary routine in the transmission of public documents to the other two branches of the Legislature, by sending down to the Assembly the original documents in his own possession, instead of sending to them certified copies. His message, taken in conjunction with the previous one, affords abundant subject for reflection, which I do not feel myself at liberty here to enter upon. The words are as follows:—

“AYLMER, Governor in Chief.—The Governor in Chief, willing to obviate the delay which must necessarily take place in copying, for the use of the House of Assembly, the opinions of the judges and law officers of the crown, regarding the renewal of commissions held from his Majesty's Government in this Province during pleasure, with which, in their message of this day, the House of Assembly have requested to be furnished; his Excellency now transmits those documents, in original, and requests that they may be returned to him when no longer required by the House of Assembly. The Governor in Chief also transmits a copy of a letter addressed by his order to the Attorney General, by the Civil Secretary, directing him to prepare the necessary draught of such commissions as ceased to be of legal effect after the expiration of six months from the demise of his late Majesty George the Fourth. The Governor in Chief is not aware of any further proceedings which have taken place in respect to the renewal of commis-

sions, more than the actual issue of the said renewed commissions, in pursuance of the directions communicated to the Attorney General by the Civil Secretary above referred to."

CASTLE OF ST. LEWIS, }  
Quebec, 12th February, 1831. }

With this last message were sent the following original documents, viz:—The opinions of the Chief Justice of the Province, of the Chief Justice of the District of Montreal, of each of his Majesty's Justices of the King's Bench for the District of Quebec, of Mr. Justice Vallières, resident Judge of the Court of King's Bench for the District of Three Rivers; of Mr. Justice Fletcher, and of the Attorney, Solicitor and Advocate General. All these gentlemen concurred in stating that commissions during pleasure determined by the demise of the Crown, at the expiration of the period fixed by the statute of Anne.

We come now to the proceedings had in relation to the particular case of the petition of Mr. Glackmeyer. It will be observed, upon referring to the foregoing notice of the Provincial Secretary, that its terms are general, applying to persons holding commissions which would determine six months after the demise of his late Majesty, and notifying these that their commissions would be delivered to them on application at the Secretary's office. If, then, no new commission was necessary for the petitioner, the notice did not embrace his case, still less was it compulsory on him to take out a new commission. In taking out a new commission, or not taking out a new commission, he exercised his own free judgment, and in the latter case he acted *suo periculo*, and so also would those who might choose to employ him. The only competent tribunal to determine the question of the validity or invalidity of his acts, involving, as that question would do, the question of his obligation to take out a new commission, was the judiciary of the country. The petitioner seems to have been desirous to obtain the opinion of another public body upon this point prospectively, and of a body, too, which constitutional-



ly could not determine it—I mean the Governor in Council. For this purpose, he demanded at the Provincial Secretary's office a certificate of legalization, in the usual form, of an instrument executed by him as a Notary Public after the expiration of the six months from the king's demise. The Provincial Secretary, very properly not choosing to take upon himself the responsibility of determining the question of the effect of the demise of the crown upon the commissions of Notaries in this Province, wrote the following letter to the Civil Secretary:—

“ SECRETARY'S OFFICE, QUEBEC, Dec. 30, 1830.

SIR,—Having been applied to for a certificate under the hand and seal of the Governor to a document signed by two Public Notaries who have not taken out new commissions, I consider it my duty to bring the circumstance under Lord Aylmer's notice: as from the terms of such certificate (the form of which I have the honour to subjoin for his Excellency's information) I do not consider myself justified in determining the extent to which Notaries' commissions have been affected by the demise of the crown, by preparing such an instrument for his Excellency's signature without further instructions.

I have, &c.

(Signed) D. DALY, Secretary.”

The subject appears to have been referred to the Executive Council, and the following is an extract of their report:—

“ Extract of a report made by a committee of the whole Council, dated the 4th January, 1831, on the Provincial Secretary's letter of the 30th December, 1830, requesting instructions as to preparing certificates to be attached to documents signed by notaries who have not taken out new commissions—approved by His Excellency the Administrator of the Government:—“The committee cannot presume to give any opinion on the question submitted by this officer, as to the extent to which the commissions of notaries are affected by the demise of the crown, that being a question which can only be properly determined by the King's Courts; but under existing circumstances they think it advisable that the certificates for legalizing or authenticating the instruments passed by notaries who have not renewed their commissions, should set out the special matter according to the truth of the fact.

(Signed)

GEORGE H. RYLAND.”



The order in Council is manifestly in consonance with law and reason. The grave consequences which might have flowed from the Council adopting a different course will be pointed out when we come in the sequel to consider the proceedings had in relation to the same subject by the Committee of Grievances, who took upon themselves to determine this question, and in a manner which I fear will be found contrary to law. At the instance of the Provincial Secretary, the Attorney General was directed to prepare the draught of a certificate for authenticating documents executed before notaries who had not renewed their commissions; and, in strict conformity with the aforesaid report of the committee of the Executive Council, he prepared and transmitted to the Provincial Secretary for his guidance, the following draught of such certificate:—

"His Excellency, &c. &c., to all to whom these presents may come:—I do hereby certify that A. B., previous to the demise of his late Majesty King George the Fourth, to wit, on the .....day of.....in the year of our Lord one thousand .....hundred and....., was in due form of law commissioned to be and act as a Public Notary in and for the Province of Lower Canada, and that full faith and entire credit are and ought to be given to his signature in that capacity, in so far as the same may be warranted by law, under the said appointment."

The petitioner seems further to have complained of some change in the form of the commissions granted to the Notaries. From the time of the passing of the provincial ordinance regulating the admission of Notaries, their commissions have always been during pleasure; and the new commissions are of course in the same terms. The changes made in them are purely of a technical character, not at all touching their rights or powers, and merely concerning the form in which those powers were to be conferred. To judge from the questions which were put by the committee, they seem to have been entirely unacquainted with the technical rules which dictated, and, as I think, rendered fitting these changes. The nature

of the changes, and the propriety of them, will be perfectly understood by lawyers, after perusal of the following answers given by the Attorney General to questions put to him by the committee respecting them:—

For what reason did you think proper to change the form of the commissions for Notaries since the demise of his late Majesty George the Fourth, whilst you d'd not think proper to change that of the commissions for Barristers (Attornies)?—Whatever changes may have been adopted in framing the commissions of Notaries, subsequently to the demise of his late Majesty George the Fourth, were adopted in consideration of legal fitness and propriety. In such new commissions as may have been required for Attornies, no alteration was deemed necessary or expedient.

What law, or what part of any law, authorised you to change the form of the old commissions for Notaries, and to insert therein the following words:—“*William the Fourth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith,*” “at his special instance,” “of our especial grace,” “certain knowledge and mere motion;” “in testimony whereof we have caused these our letters to be made patent, and the great seal of our said Province of Lower Canada to be hereunto affixed”—“Witness *Matthew Lord Aylmer, Administrator of the Government,*” &c., which are not found in the old form for commissions of Notaries?—The words mentioned in this question, as not being to be found in former commissions of Notaries, are words *de style*, used in instruments of this nature, issued under the great seal. They are not to be found in the old commissions, because these commissions were issued under the seal at arms of the Governor for the time being. No law is deviated from or infringed by the use of the words referred to.

Can you state the reasons which required the great seal to be affixed to the new commissions for Notaries, and the words “of our mere motion” to be inserted therein, which are not to be found in the old commissions for Notaries?—The general rule with respect to the form of instruments to be used in the appointment of public officers is, that such appointment be made by an instrument under the great seal of the Province. Being, on the occasion referred to, required, for the first time in my official capacity, to prepare the draught of a commission for Notaries, I deemed it proper to advert to this rule, and therefore prepared the draught in the form in which it would pass the great seal.

Why, therefore, did you not cause the great seal to be affixed to the commission for Attornies, and cause the same words to be inserted therein, since they are as much public officers as Notaries?—There are considerations which distinguish the commissions granted to Attornies from those granted to Notaries.

Are not the qualifications of Attornies and Notaries in this Province regulated by the same law, and what is the reason of the difference you make?—The principal cause of difference is found in the circumstance of Attornies being officers of certain courts, to whose superintending authority and coercive power in the discharge of their duties they are subject; whereas Notaries, as public officers of the government, are charged with more important powers and duties, and act independently without any other controul than that imposed by the provisions of law.

By what law, or what part of any law, were you authorised to insert in the commissions of Attornies, and in the old commissions of Notaries, the words “during pleasure?”—The commissions which have been issued under the ordinance regulating the appointment of Attornies and Notaries, from the time of the passing of the ordinance to the present time, that is, for nearly half a century, have, without exception, contained these words, which are to be found in the new as well as in the old commissions.

Are the words “at his special instance,” which are met with in the new commissions for Notaries, also words *de style*, in commissions under the great seal, or for what other reason have they been inserted?—These words are introduced into the commission, because it is only on the special application of the individual that they are issued, as required by the ordinance.

Is the new commission for Notaries in the usual form of commissions under the great seal?—The commissions for Notaries are framed in strict conformity with the requirements of the ordinance, and in the form of instruments under the great seal.

Do you conceive that any greater controul would be established over Notaries under the new form than under the old?—No.

These details, I am sensible, are tedious, but they are necessary to enable the public to come to a right judgment upon the correctness of the report in question, to the examination of which I shall next proceed.

## NO. VII.

## ON THE FIRST REPORT OF THE COMMITTEE OF GRIEVANCES.

Quibus in controversiis cum sæpe a mendacio contra verum homines stare consueverent, dicendi asiduitas sicut audaciam, ut necessario superiores illi propter injurias civium resistere audacibus, et opitulari suis quisque necessarius cogerentur. Itaque cum in dicendo sæpe par, nonnunquam etiam superior visus esset is, qui, omisso studio sapientiæ, nihil sibi præter eloquentiam comparasset, fiebat, ut et invidiositas, et suo judicio, *dignus*, qui rempublicam gereret, videretur. Hinc nimirum non injuria, cum ad gubernacula reipublicæ, temerarii, atque audaces homines socerant, maxima ac miserrima *navfragia* fiebant.

Cic. DE LEX.

## THE SUBJECT RESUMED.

HAVING thus disposed of the proceedings had in relation to this matter, within the Colony, we may now go back to the consideration of the public law applicable to the subject, and of the course pursued by the committee. But before doing so, we are called upon to look at the report of the committee itself; and it would have been satisfactory to find therein what the public had a right to expect—a plain and distinct enunciation of the question in controversy, and of the principles which were to lead to its solution. The jejune and immature character of this production precludes our taking it as any standard for the enquiry which we are to institute; we are constrained, in the first instance, to look at the subject as it stands in itself, and we shall afterwards examine the divergencies of this production.

The matter submitted to the committee would, to mature minds, have distributed itself under three heads :—

1st. Are the officers of the Government within the Colony holding commissions from the crown during pleasure, generally, bound to renew their commissions upon each new demise of the crown?

2d. Do the Advocates and Notaries Public commissioned within the Province fall under the operation of this rule, or are they an exception to it?

3d. Have the Advocates and Notaries any just ground of complaint for the course pursued by the Government in relation to the renewal of commissions upon the late demise of the crown?

Upon the first head we apprehend that it is not easy to give any thing more distinct than that which the opinion of the Attorney General affords. The question submitted to him was not of peculiar difficulty, but *ex pede Herculem*. Short and easy as this production is, one can readily believe that it comes from the pen of a man who is confessedly the first lawyer of Lower Canada.

“QUEBEC, 8th December, 1830.

SIR,—I have been honoured with the commands of his Excellency the Administrator of the Government, signified in your letter of the 7th instant, requiring me to report with all practicable dispatch, for his Lordship's information, what effect, in my opinion, the demise of his late Majesty George the Fourth will have on commissions of public officers in this Province, after the lapse of six months from that event, and whether a renewal of such commissions will be of indispensable necessity before the expiration of the said period of six months.

In obedience to his Excellency's commands, I have the honour to state, that, according to the first rule of the common law, the commissions of public officers in this Province, which were in force at the time of the demise of his late Majesty George the Fourth, would have been determined by that event. But this rule of the common law has been modified by the statute 6th Anne, 7, according to the provisions of which, all such commissions will continue in force for six months from the period of his late Majesty's demise. At the expiration of this period, the rule of the common law will have the same effect in determining the commissions of public officers which

it would have had at his late Majesty's demise, if the legislative enactment now referred to had not been made. I am, therefore, humbly of opinion, that, in the absence of any legislative provision for a further or permanent continuance of officers in their respective offices, the commissions of public officers in this Province, by the demise of his late Majesty, will be determined at the expiration of six months from that event; and that the renewal of them before this period elapses will be of indispensable necessity, to prevent any interruption, or supposed interruption, in the continued legal exercise of their functions.

I have, &c.

J. STUART, Attorney General.

Lt. Col. GLEGG, Secretary, &c."

The principles stated in it are not to be controverted. There is a wide latitude to be allowed for error, *humanum est errare*; but this indulgence is not to be extended to ignorance. A man who professes to be a lawyer *spondet peritiam artis*, and these juvenile lawyers who either controverted or misunderstood, or who had never read, the primary principles which ought to have guided them in the report to which we shall by and by come, are not to be excused on the score of ignorance; to them, at least, the maxim, *ignorantia juris neminem excusat*, is peculiarly applicable.

The opinion thus given by the Attorney General requires, on the part of men in the slightest degree conversant with the law, no confirmation or authority. If that authority were required, and we were to seek it beyond the bounds of the whole of the repositories of the common law of England, we should find it in the concurrent opinions of the Chief Justice of the Province, and the Chief Justice of Montreal, supported by those of the Judges of Quebec, and not contradicted except by the young chairman and young lawyers of the Committee of Grievances, the grounds of whose opinion, so far as they are to be detected, we will hereafter examine.

Considering, then, that all commissions from the crown during pleasure, determined at the expiration of six months from the demise of the crown as a matter not susceptible of controversy, the remaining question upon this branch of the sub-



ject is, whether the Advocates and Notaries Public, commissioned within the Province, fall under the operation of this rule, or are they an exception to it.

It is proper to premise, that whatever conclusion we may come to in this inquiry, we have not the benefit of the lights of any of the foregoing opinions ; those opinions cover an abstract question. The inquiry that we are now to enter into is, whether Advocates and Notaries fall within the general thesis stated.

There are very many considerations to distinguish the profession of an Advocate from the office of a Notary ; and it is somewhat surprising that the chairman of the Committee of Grievances should not, even in the short period which he had devoted to his profession, have had time to learn the difference between the profession and the office. Nothing is better established than that the Notary is an officer of government. It may be well, for the instruction of the younger members of the committee, to put before them some authorities from the elementary books on this point :—

“ Notaire se peut définir un officier public institué à l’effet de rédiger par écrit, dans la forme prescrite par les loix, et de rendre authentiques par sa signature, les conventions qui se passent entre les hommes, et les dispositions qu’ils peuvent faire soit entre vifs, soit à cause de mort.

Ainsi, les Notaires sont des personnes publiques, établis pour écrire et arrêter ce dont les parties demeurent d’accord et sont considérés comme de fidèles témoins de la vérité des actes, qui se passent devant eux, auxquels ils donnent une autorité publique, distinguée de celle que peuvent avoir non seulement les promesses verbales faites devant témoins, mais encore des actes passés sous signature privée.—*Parf. Not., tom. 1, liv. 1, ch. 1.*

Personne ne doute qu’un Notaire rédigeant un acte sur du papier commun, cet acte ne perde, par cette seule circonstance, le caractère d’authenticité que la présence et le ministère du Notaire auroient pu lui donner. Il n’est donc pas vrai qu’un acte soit authentique par la seule présence d’un officier public ; il suffiroit de consulter les Dictionnaires pour y apprendre qu’en termes de Jurisprudence, authentique signifie ce que



est revêtu de toutes les formes et qui est attesté par des personnes publiques.—*Euv. de M. Cochin, tom. 2, p. 564.*

Les fonctions des Greffiers et des Procureurs, et celles des Huissiers, et des Sergens, s'exercent ou pour l'administration de la justice dans les tribunaux, ou ailleurs, pour en exécuter les ordres ; et sont par là distinguées de celles des Notaires, qui s'exercent hors des tribunaux, et sans qu'il soit nécessaire qu'ils aient un ordre particulier à exécuter.—*Domat, Droit Pub., tom. 2, p. 181.*

Un Notaire est parmi nous un officier public, dont la fonction est de rédiger par écrit, et dans la forme prescrite par les loix, les actes, conventions, et dernières dispositions des hommes.—*Dict. de Droit, tom. 2, p. 267.*

Ces officiers sont des témoins choisis à qui le public se rapporte de la vérité des actes qui ont été faits en leur présence, et qu'ils ont attestés véritables.—Les actes qui se passent chez eux font foi en justice, et sont regardés comme des loix que les parties se sont imposées elles-mêmes dans une pleine liberté.—*Ibid., p. 268.*

Celui qui recoit un acte prohibé par les loix, comme de simonie, usure, doit être puni.—*Leg. 3, Cod. de Sacrosanct. Eccles.* Il en faut dire de même du Notaire qui recevoit une obligation, le nom du créancier en blanc.—*Ib., p. 270.*

NOTAIRE.—C'est un officier public établi pour recevoir les actes dont les particuliers conviennent volontairement entre eux et pour donner à ces actes la forme et l'autorité, nécessaires pour les faire exécuter.—*Rep. de Jur., tom. 12, p. 197.*

Il n'est pas permis aux Notaires de recevoir des actes contraires aux bonnes mœurs ou à l'intérêt public ; tels sont les contrats usuraires. Les ordonnances de Juin, 1510, et d'Octobre, 1585, veulent que les contrevenans en pareil cas, soient interdits de leurs fonctions et condamnés à une amende, ou mêmes privés de leurs offices. Tels sont aussi les contrats simoniaques et ceux où il s'agit de quelque assemblée défendue,

Il est pareillement défendu aux notaires de passer aucun acte qui contienne des déclarations injurieuses et calomnieuses. Un Notaire qui avoit reçu un acte de cette espèce a été condamné par arrêt du Parlement de Bordeaux du 5 Février, 1734, à comparoître à l'audience le même jour que les calomniateurs y subiroient la peine prononcée contre eux, et la, debout et nue tête, déclarer, qu'inconsidérément et mal à propos il avoit reçu le dit acte, qu'il s'en repentoit et en demandoit pardon à la partie offensée. L'arrêt l'a en outre interdit des fonctions de son office pendant un an, et l'a condamné à une amende de 500 livres —*Ibid., p. 204.*

Les actes Notariés sont reçus par ces officiers publics qu'on nomme *Notaires*, et par ceux qu'on nommait autrefois *Tabellions*.—*Toullier*, tom. 8, p. 111.

Quant à ce qui concerne les lois particulières, c'est-à-dire les conventions qui tiennent lieu de loi à ceux qui les ont faites, le soin de les rendre exécutoires par la promulgation a été confié à des fonctionnaires publics appelés *Notaires* créés par la loi du 6 Octobre, 1791, qui supprima tous les *Notaires* Royaux, seigneuriaux, tabellions et autres existans à cette époque, sous quelque dénomination que ce fut, et donna une forme nouvelle à l'organisation du notariat, à laquelle la loi du Ventose an XI. a ajouté plusieurs dispositions, la plupart puisées dans les anciennes Ordonnances.

Il faut observer que ces lois ont opéré un changement remarquable dans la nature des fonctions des *Notaires*.

Ils sont aujourd'hui les délégués directs et spéciaux du pouvoir exécutif, pour rendre exécutoires tous les actes et contrats auxquels les parties doivent ou veulent faire donner le caractère d'authenticité attachée aux actes de l'autorité publique. Leur autorité n'est plus comme on le pensait autrefois, une émanation de l'autorité judiciaire, mais une délégation immédiate de la puissance royale.

Dans la rédaction de la minute, le ministère du *Notaire* est purement passif. Il n'est que le Secrétaire ou le Scribe des parties ; il doit se borner à rendre leurs volontés fidèlement et avec clarté ; il peut seulement et il doit les éclairer de ses conseils, donner à l'acte la forme que les lois ont prescrites, le faire souscrire et signer par les parties, attester qu'elles l'ont signé ou qu'elles n'ont su ou pu le faire.

C'est le concours des volontés des parties qui forme la loi du contrat.—*Ib.*, tom. 6, p. 223 & seq.

We apprehend that these leave no doubt that a Notary is a public officer, and let me be permitted to add, an officer requiring much more severe superintendance on the part of the Legislature than has yet been applied ; and an officer, too, who, whether in the shape of copying clerks, or in any other shape, possesses a controul over the property of the King's subjects which cannot last. So far as the Advocate is concerned, his duties are of a very different character—his professional services are in broad daylight, and his labours vivified by a spirit of independence. Take away independence from the profession of an Advocate, and you destroy all that

is honourable. I am speaking feebly of these things; but men's minds will supply the feebleness of my expression. I cannot enter into the nobleness of the duties of the profession of an Advocate—I could not do justice to them at any time, and I am here merely looking at them incidentally; I wish only to mark that this profession and that office are separated by an immense interval.\*

One of the errors in the report under examination is the confounding of the profession of a lawyer with the office of a Notary.

Such are my sentiments in relation to the profession of the law; yet I see no reason to complain of the notice from the office of the Provincial Secretary above given, nor of the reports of the different law officers of the crown and of the judges upon this head. The grounds of complaint contained in the first Report of Grievances we now reach, and they shall be considered in our next number.

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\* Quoique les Avocats ne soient pas du nombre des officiers comme le sont tous ceux qui exercent dans l'ordre de l'administration de la justice les fonctions dont on a parlé jusqu'ici; comme on doit traiter dans ce livre, non seulement des officiers, mais aussi des autres personnes qui participent aux fonctions publiques, et que celles des Avocats regardent le public, et font partie de l'ordre de l'administration de la justice, elles font aussi partie de la matière de ce livre, et on ne peut se dispenser d'y expliquer quelles sont ces fonctions et quels sont les devoirs qui en sont les suites.

La Profession des Avocats est, &c.

*Domat, Drou Public, tom 2, p. 182.*

## NO. VIII.

ON THE FIRST REPORT OF THE COMMITTEE OF  
GRIEVANCES.

Quibus in controversiis cum saepe a mendacio contra verum homines stare consuescerent, dicendi assiduitas aluit audaciam, ut necessario superiores illi propter injurias civium resistere audacibus, et opitulari suis quoque necessariis cogerentur. Itaque cum in dicendo saepe par, nonnunquam etiam superior visus esset, is, qui, omisso studio sapientiae, nihil sibi praeter eloquentiam comparasset, fiebat, ut et multitudinis, et suo judicio, *dignus*, qui rempublicam gereret, videretur. Hinc pimum non injuria, cum ad gubernacula republicae, temerarii, atque audaces homines accesserant, maxima ac miserrima *naufragia* fiebant.

CIC. DE LIT.

The Committee begin with saying:—

"Your Committee having taken into consideration the petition of Edward Glackmeyer, have, by means of the enquiries and researches required by the allegations in that petition, become convinced of the reality of the grievances of which the petitioner complains. Your committee have perceived with surprise, that it has been attempted to compel the Notaries of this Province to take out new commissions on the demise of his late Majesty George the Fourth; and they have to express their regret that it has been dared to exact a fee for such commission, for which there was no right; because, in the opinion of your committee, no law applicable to the Notaries of this country can justify the obligation which has been attempted to be imposed upon them on this occasion."

To have rendered the printed report complete, it was necessary that we should have been furnished with the copy of Mr. Glackmeyer's petition, and it ought to have been sub-

joined to the printed report; in the absence of that document, the public is in the dark *as to the specific grievances of which the petitioner complains, and of the reality of which they have become convinced.* It would also have been more in accordance with the rules of logic, if the committee had noted the premises upon which the conclusion was founded, as well as those which led them to the conclusion, that a fee was exacted for those commissions for which there was no right; and further, the grounds upon which rested their opinion that there was no law applicable to the Notaries of this country to justify the obligation which it is said has been imposed upon them on this occasion. There is, too, in this paragraph an involution of sentence, a mixing up of decisions upon several questions as identical, and an incorrectness in the statement of facts unfavourable to the discovery of truth. Thus, the statement that Notaries were compelled to take out commissions has not that character of severe accuracy, without which questions of this nature cannot be safely treated. From the facts contained in the appendix to the report, it is apparent that the Notaries were not compelled to take out commissions, and the report itself informs us, in a subsequent part of it, that of the whole number of the Notaries commissioned for Lower Canada, only thirty-one took out new commissions; and of the number of those who did not take out new commissions is the petitioner himself. It was clearly optional to the Notaries to take out their commissions or not, as they should be advised or thought proper. If they were public officers holding commissions during pleasure, sound discretion might perhaps have dictated to them the propriety of receiving their commissions; but, although no legitimate ground of complaint lay on their part, because of their having an opportunity so afforded to them of renewing their commissions, serious responsibility would have attached to the Provincial Government, and more especially to the law officer of the crown charged officially with the preparing of the commis-

sions rendered necessary by the demise of the crown, if he had failed to afford to the Advocates, as well as to the Notaries, the means of taking out such commissions, if they thought fit. As the matter now stands, the Notaries who have not chosen to take out their commissions, and those who choose to employ them, act upon their own judgment; and without any other controul than the controul of the law, be that what it may, and subject only to such consequences, if any, as flow from that law. There is nothing here of the will of any man, or of any set of men, controlling or impeding the operation of the law, or compulsory upon these individuals. It would have been otherwise if the officer charged with the preparing of the renewed commissions generally, had taken upon himself to furnish no drafts for Attornies or Notaries. It is obvious that if the law required such commissions to issue, and that in default thereof the powers of Advocates and Notaries determined at the expiration of any given period from the demise of the crown, such nonfeasance on the part of the public officer could not have had the effect of preventing the operation of the law. These individuals must have been visited in their own proper persons and property with the consequences of this nonfeasance on the part of the public officer; and even though the conclusion he had come to should have been a correct one, still his conduct would not have been justifiable, inasmuch as it was the right of each individual of this profession, and of this office, to exercise his own judgment upon a subject wherein his own rights were involved, and to obtain, on the payment of the usual and established fees, a renewal of his commission. So far, then, from its being a legitimate subject of complaint that drafts of these commissions were prepared, the public officer would have incurred a high responsibility if he had not done so. In one word, the act here complained of was an act done in the fulfilment of his public duty.

The latter branch of this paragraph is equally deficient in logical precision; it is therein assumed that there was no right



to exact or receive a fee, because, in the opinion of the committee, no law applicable to the Notaries of this country could justify the obligation attempted to be imposed upon them, to take out new commissions. I shall come by and by to the consideration of the assertion hazarded by the committee, in relation to the right to receive these fees : at present I confine myself to the consideration of the proposition here stated, and its logical accuracy : it may either mean that Notaries not taking out their commissions were not bound to pay any fee upon them, because no new commissions were in their opinion necessary, or it may mean that Notaries taking out new commissions in pursuance to the notice above given were not bound to pay any fees upon so taking out these commissions, because again, in their opinion, the renewal of the commissions was unnecessary. These propositions are very different, and ought not to be confounded. It stands admitted that Notaries may or may not sue out new commissions as they think fit, subject, however, to the legal consequences of such default, if it be one, and without being liable for the payment of any fees whatsoever upon commissions which they have not thought proper to accept, and accordingly upon this class of persons no fees have been exacted or received. It is widely different as to the Notaries who chose to take up their commissions. On what ground could they claim an exemption from the payment of the stated fees upon demanding and receiving their commissions ; the payment of the fees was incident to their own act, and these fees constituted the legal remuneration to the public officers whose services they had used. It is this last proposition which, from the context of the report, we are led to believe that the committee intended to state, and its inaccuracy seems to be manifest.

The Committee go on :—

“ Your Committee deem it their duty to remark to your honourable House, that the notice which was published, by order of the Executive Council, after the 15th of December, was addressed to persons who held commissions ‘ during plea-



sure,' that they could not remain in force after the 26th of the same month, in virtue of a certain statute. That act, that of the sixth year of the reign of Queen Anne, chap. 7, only speaks of the commission of public officers, whom the King may dismiss whenever it pleases him; and it is by the effect of a principle of the common law of England, limited by that statute of Queen Anne, that on the demise of the Kings of England, those public functionaries must in England be continued in those offices, which they cannot fill except by the will of the reigning sovereign. The application which has been made of this statute, or of this principle, to the Notaries and other persons exercising professions in this Province, by requiring the renewal of their commissions, is an encroachment upon the independence which, it is acknowledged, ought to characterise those professions, and to remove therefrom the influence of any power to which the law which established them does not require them to submit. Independent of the injustice there would be in rendering a class of men who maintain themselves by their labour and their industry, dependent upon any government for their means of subsistence, the danger and the innumerable inconveniences must be felt, which would be the result in this country of the subserviency of professions to the executive power; and to show how much such a pretension is unfounded, your committee believe that it will suffice to observe that the persons who exercise professions in Canada do not hold the power of exercising them from the will of government, but from the law, which established those professions, and which ordains that every individual possessing the necessary qualifications shall be admitted to them."

This paragraph is equally deficient with the last, in logical precision and in legal accuracy; let it be analysed for the purpose of ascertaining how far this is true:—It is therein stated—

1st—That the notice was addressed to persons who held commissions during pleasure, that they could not remain in force after the 26th of December, by virtue of a certain statute.

2d—That the statute in question only speaks of the commission of public officers, whom the King may dismiss whenever it pleases him; that the statute in question limits the principle whereby those public functionaries must in England

be continued in those offices which they cannot fill except by the will of the reigning sovereign.

3d—That the application of this statute, or of this principle, to the Notaries and other persons exercising professions in this Province, by requiring the renewal of their commissions, is an encroachment upon their independence, and dangerous as tending to render them subservient to the executive power.

4th—That the Notaries hold their power from the law, and not from the will of Government.

We will begin by granting all these propositions hypothetically, and ask any gentleman to put them into the form of a regular argument. They are insulated propositions, right or wrong, having no one common bond, and not linked together by any ratiocinative process; but this is not all—there is not one of these propositions, with the exception of the first, which is not radically erroneous. Let us proceed to the examination of them consecutively; and as to the first, if we look at it as a truncated member of a syllogism, and supply the members of the syllogism elliptically passed over, we may state that syllogism in full, thus:—

The powers held by officers holding commissions from the crown during pleasure are determined, by the demise of the crown, within a given period from such demise.

Notaries Public in Lower Canada are public officers of the crown, holding commission from the crown during pleasure.

*Ergo*—Notaries Public in Lower Canada are not, upon the demise of the crown, bound to renew their commissions.

The 2d proposition is stated rather in the way that the committee meant it, than that in which they have expressed it.

If the above extract be looked at, it will be seen that the continuance of public officers for a certain period, subsequent to the demise of the crown, was derived from the common law; whereas they must have meant to say, that the extension of the powers of the public officers, subsequent to the

demise of the crown, was due to the statute of *Anne* ; but putting it any way, the above proposition of the committee secondly stated, is substantially and fundamentally erroneous. The general principle referred to in this extract is not, as the committee seem to surmise, a rule of law of the municipal common law of England, confined in its operation like that law to England itself—it is a rule of the public constitutional law of the British empire, commensurate in its operation with the limits of that empire ; nor is it true, as the committee also seem to surmise, that the statute of *Anne* is confined in its operation to the public officers in England ; that limiting act is in like manner commensurate with the limits of the British empire. Let the words of it be looked at ; they are, that

“ Neither the office or place of Lord Chancellor, or Lord Keeper of the Great Seal of Great Britain, or of Lord High Treasurer of Great Britain, Lord President of the Council for Great Britain, Lord Privy Seal of Great Britain, Lord High Admiral of Great Britain, or of any of the great officers of the Queen or King's household for the time being, nor shall any office, place or employment, civil or military, within the kingdoms of Great Britain or Ireland, dominion of Wales, town of *Berwick-upon Tweed*, Isles of *Jersey*, *Guernsey*, *Alderney* and *Sarke*, or any of her Majesty's Plantations, become void by reason of the demise or death of her present Majesty, her heirs or successors, Queens or Kings of this realm ; but the said Lord Chancellor, &c., and every other person and persons in any of the offices, places and employments aforesaid, shall continue in their respective offices, places and employments, for the space of six months next after such death or demise, unless sooner removed and discharged by the next in succession as aforesaid.”

The 3d proposition states considerations altogether foreign from this inquiry in its present form. Some persons may think that in the absence of the discipline and superintendence exercised over Notaries in France, a power of this nature to be used towards unworthy members of the body (and no profession or condition in life can boast of entire exemption from such) is essentially necessary for the public security ; but this is a question for the Legislature. The duty of the king's sub-

jects generally, and more particularly of the officers of government connected with the administration of justice, is to obey the law, not to substitute their own ideas of expediency in its place:—I think, then, I have not gone too far in saying that the third proposition is entirely irrelevant to the subject matter of enquiry.

The 4th proposition implies a want of knowledge of constitutional principle, which, after the lapse of forty years since the constitutional act has gone into operation, is truly surprising. Is it possible that the gentlemen of the committee should not know that the British government is a government of law, and that all officers, from the king himself to the lowest officer, he immediately, all the others mediately, derive their powers from the law? The distinction of a legal power derived from the law, and one derived from the will of Government, is one to be found nowhere. It is not necessary to enlarge upon a principle like this, elementary in constitutional law.—The Committee proceed:—

“Your Committee now return to a detail of the principal facts which have appeared in the course of the enquiry they have made on the subject of the renewal of commissions:—

“After the publication of the notice of the 15th December, the Provincial Secretary, who had been ordered to communicate immediately with the Attorney General, for the purpose of preparing the new commissions, become necessary by the demise of the king, did prepare commissions for the Notaries and Attornies. The public then became alarmed by the opinion of the law officers of the crown. The Notaries of Quebec assembled in a body to protest against what they, with reason, considered as an unjustifiable oppression. The bar of Quebec, that of Montreal, and that of Three Rivers, declared that they were not bound to take out new commissions. Nothing of this had, however, the effect of preventing such measures being resorted to as could be found, to cause the putting into execution of the pretensions which had been set up. Several Notaries who had not renewed their commissions could not obtain the usual certificate which is appended to such instruments as have to be sent into foreign parts. The Provincial Secretary gave them a new certificate agreed to by the Executive Council, and which rendered

doubtful the authenticity of these instruments. Other Notaries, who would not take out new commissions, had to suffer under the doubts which were entertained as to the validity of their acts. At last eleven Attornies and thirty-one Notaries took out those new commissions, for each of which the sum of three pounds five shillings was exacted, out of which James Stuart, Esq., the Attorney General of this Province, received two pounds."

The facts stated in this extract do not appear to be of the very highest importance. The public, it seems, became alarmed by the opinions of the law officers of the crown.—Supposing the fact to be as here stated, and there is no other evidence of it than that which the assertion of the committee affords—had they a right to be so alarmed? Their opinions are before the public, and educated men, both here and elsewhere, can and will judge of them; but "the bar of Quebec, that of Montreal, and that of Three Rivers, declared that they were not bound to take out new commissions!" What may have been done by that profession at Montreal or Three Rivers I know not; the assertion here made respecting the bar at Quebec is incorrect in point of fact—no such declaration was ever made by the bar of Quebec—but forsooth the Notaries also called a general meeting, and they, too, came to a determination to protest against what they consider as an unjustifiable oppression. Could any of these declarations, if made, modify or alter the law; and what was the oppression that these protesting Notaries complained of? it was that an opportunity was afforded to such Notaries as thought fit to renew their commissions, to do so upon paying the usual legal fees; but the form of the certificate was altered; it has been already shown that the certificate given was according to truth, without prejudicing the question, and that any prejudication of it lay not within the competency of the Governor in Council—would not have been binding—and if erroneous might have led to very grave consequences. The paragraph concludes with stating that for each of the new commissions

taken out by certain Attornies and Notaries, the sum of three pounds five shillings was exacted, out of which James Stuart, Esquire, the Attorney General of this Province received two pounds. I think that I have satisfactorily shewn that there was no peculiar hardship in the persons suing out the new commissions being called upon to pay for them; the word *exacted* here used is one more of the many inaccurate expressions with which this report abounds: but it seems that the Attorney General for the Province received two pounds upon each of these commissions; and what then if the Attorney General is entitled to two pounds upon the issuing of each new commission? The committee must have known, and ought not to have omitted to state, that that fee was established many years ago, and has been, from the period of its establishment, received by the present Attorney General and his predecessors in office.

The Committee proceed:—

“Your Committee cannot pass over in silence the extraordinary alteration which the Attorney General thought necessary to introduce in the commissions of Notaries on the demise of his late Majesty George the Fourth. Those alterations are contrary to the spirit of the ordinance of the 25th of George III., ch. 4, and assimilate these commissions to those of the public officers whose appointment depends upon his Majesty.

“Your Committee think it right to observe, that the Attorney General has not been able to give your committee any satisfactory explanation of those alterations, and that the words “during pleasure,” which, before the time, were inserted in the commissions of Notaries, could not justify those alterations, because it was by an abuse, unauthorised by law, that those words were inserted in those commissions, and that it was the duty of the Attorney General to have left them out in the forms which he has prepared.”

We find in this extract the same indistinctness and vagueness which we have had occasion to observe in the previous parts of this report, and it seems almost to defy all logical analysis. We will try, however, again to ascertain the proposi-



tions which the committee seem to wish to have enunciated.

1st—The Attorney General introduced in the commissions of Notaries, on the demise of his late Majesty George the Fourth, alterations contrary to the spirit of the ordinance of the 2d George III., ch. 4, and assimilated these commissions to those of public officers whose appointment depends upon his Majesty.

2d—That the Attorney General omitted to leave out in the forms which he has prepared the words "during pleasure," inserted in the previous commissions of Notaries, and which ought not to have been done.

It has been already shewn, that the only alterations made in the commissions in question were of a merely technical character ; and, at the same time, they gave a superior technical accuracy to the instrument, which did not touch its substance. Now, so far as the mere technical form of an instrument is concerned, it lies within the peculiar province of the law officer of the crown to take care that it be accurate ; his reputation for professional skill and learning, if there were no other and higher obligation, rendered this imperative upon him ; but in what concerns the substance of the commission, he is not justifiable, when ordered to renew it, to change its substance and alter its nature. Now, the words "during pleasure" constitute a substantial part of the commission ; yet it is because he did not omit or change these words, and substitute in their place others, not sanctioned by law or usage, and depending for their introduction upon his own mere arbitrary will and choice, that the committee have passed their censure upon him.

Having thus gone over the various grounds stated by the committee, and to avoid all possibility of misrepresentation of them, having given them in their own words, I come, in conclusion, to the consideration of the resolutions which are predicated upon them by the committee. These are, in substance :—



1st—That the renewal of the commissions of Attornies and Notaries was not necessary.

2d—That the Attorney General had no right to the fees received by him upon the new commissions.

3d—That he has introduced alterations by which these commissions are assimilated to those of public officers, whose appointment depends upon his Majesty, and has therefore been forgetful of his duty, and rendered himself guilty of a contempt of the law, which did not allow of the introduction of the said alteration.

4th—That the words "during pleasure" were introduced in the commissions of Attornies and Notaries, contrary to law, and ought to be omitted.

Having said all that I think material upon these deductions of the committee, it remains for me only to state such reflections as occur upon the propriety of the course of proceeding taken by them generally, without reference to the question of the correctness or incorrectness of those conclusions. The first resolution is a resolution declaratory of the law proposed to be adopted by one single branch of the Legislature. I apprehend that this is of dangerous precedent: where the law is doubtful, it is the province of the King's Courts to determine it. No one branch of the Legislature can do so by resolution, nor can, nor ought any Court of Justice to take notice of such resolution. A contrary doctrine would involve a subversion of all law. Resolutions of this nature can serve only to mislead the public; they have about them a semblance of public authority, calculated to give them an extensive weight, which does not belong to them.

It is still more exceptionable to try the private rights of a subject of the king incidentally, and punish him by censure; for censure is a punishment, and a very severe one, without having jurisdiction of the question of right.—A fee of office is a right of property; a title to it is to be tried in two ways, either by a civil action, or by an indictment for extortion.

These remedies are available as well against the highest as against the lowest officer of government. These proceedings being of a public character, regulated by the known and established rules of law, are manifestly most conducive to the ends of right and justice; whereas, on the other hand, a course of the nature of that pursued by the committee subjects the individual complained of to inconveniences which he ought not to be made liable to.—The following observations of a distinguished writer have so direct a bearing upon this branch of the subject, that I cannot refrain from here inserting them. They relate to the proceedings had by the House of Commons against Lord Melville.

“Of all the privileges enjoyed under the British Constitution, the most valuable is the security which it affords to every individual, of whatever rank or station, that he shall not be found guilty of any charge without a hearing. That is, *without a fair and impartial trial.*”

“This privilege is even more valuable than the protection which the constitution affords to all who live under it, against every act of despotism on the part of government. For the instances in which individuals are liable to be sensibly injured by a despotic use of the powers of government are few, and of rare occurrence; and they are scarcely ever to be found in the private walks of life. But every individual, at all times, wants the protection which can be afforded only by a fair and an impartial administration of justice. Indeed, were justice well administered, the powers of government, though despotic in their form, and free from other necessary checks, are subject to so efficient a controul, that they can seldom be exercised for the purpose of individual oppression. To secure this, its favourite object, an impartial administration of justice, the constitution has made it an essential principle of its judicial polity, that no person shall be condemned unheard. Trial by jury, which is also a grand means for the attainment of the same end, as being most admirably calculated to secure to the accused a fair trial, is, in various instances of minor delinquency, dispensed with. But the principle that the accused shall be heard before he can be condemned admits of no dispensation, no exception, no qualification. It can in no instance be departed from without a violation of the constitution. This principle is, indeed, so obviously deducible from

the first rudiments of universal justice, that any judicial code which should fail to recognize it would be radically defective. But it is peculiar to the British Constitution to give full effect to this principle, which it professes to hold sacred and inviolable. It is, however, undeniable, that in the case of Lord Melville the above principle was violated. In that case an accused individual was condemned unheard. Lord Melville was pronounced by the House of Commons to be guilty of a gross violation of the law, and a high breach of duty, without a hearing, without a trial, without being called upon, in any way, to answer the charges on which so severe a sentence was founded, without being informed that such charges were prepared against him.

"It will hardly be pretended that the operation of the principle in question is confined to the ordinary administration of justice, and that the House of Commons has a constitutional right to dispense with it, by proceeding to condemnation without a hearing of the party accused, or without affording him any opportunity of self defence. If this be the case, then is the principle itself a mere cypher. For its value depends upon the universality of its operation, in the security which it affords to all persons, under all possible circumstances, and against every possible species of power, whether regal, aristocratical, democratical, or judicial. If, in any case, it be inadequate to afford protection, then is there no effectual bulwark secured to the dearest liberties, to the most sacred rights of the subject.

"But of all the powers and authorities in the state, there is no one in which an exemption from the obligation of this principle would involve so gross a violation of the constitution, or be fraught with so much danger to the rights and liberties of the subject, as the House of Commons. That House which superintends all interior jurisdiction is itself amenable to no jurisdiction whatever. It is the sole judge of its own proceedings, which are, therefore, superior to controul, and against which, though productive of the grossest injustice, there is no redress. It is also a *democratical* body, a popular assembly, and, consequently, liable to that sudden effervescence of passion, to which such bodies and assemblies are particularly exposed, and which, indeed, is one of their characteristic qualities. It is, further, the great scene of party contention; and party feelings are apt to mix themselves, more or less, with its proceedings. But the influence to which the House of Commons is subject from without, particularly disqualifies it for an absolute and unqualified exercise of judicial powers. Its members, such of them at least as are re-

turned by means of popular election, are certainly looking forward to the period when they shall again solicit the suffrage of their constituents. To ensure those suffrages, they will even feel a strong inducement to gratify popular feelings; and every one who is at all acquainted with human nature, must know that the readiest way to produce that effect is, to display an eagerness to detect abuses, and to hold forth the persons who are but even suspected of them to public indignation. When ever, therefore, an individual is charged with any species of delinquency, which is calculated to agitate the public mind—ever ready to condemn without proof—the House of Commons is the very last place in the world in which he is likely to enjoy the advantage of a fair trial. Such a person is there exposed, (and unless a seat happens to afford him an opportunity of *self defence*,) *absent and defenceless*, to all the violence of popular feeling, perhaps to all the bitterness of party resentment, eager to avenge exertions which may have merited the gratitude of the country. While ministers, with all their weight and influence, may be unable to stem the torrent of prejudice or clamour, or may fear to lose, in the attempt, that popularity which is the prop and support of their power.

"The Constitution, it must be observed, is not chargeable with the anomaly of investing a body of men, so constituted, and so exposed to the very worst kind of influence, with judicial powers, except in the single instance of the election of its own members. The House of Commons is not to be found in any enumeration of the courts of justice known to this country. It does not even possess the power of applying an oath to the conscience of any individual—a power, the exercise of which is the main spring of the administration of justice. Powers of investigation it certainly possesses, and that to a very great extent; and such powers are essential to its grand function of accusation, by impeachment before the House of Lords. But it is clear that this function, which is precisely analogous to that of a grand jury, authorizes it only to enquire and accuse, but not to condemn. And whenever, instead of confining itself to inquiry, with a view to impeachment, it proceeds, as in the case of Lord Melville, to convict, or, which is in effect the same thing, to censure, it exceeds its province, and violates the constitution. The House of Commons has also the power of inquiring into abuses; a power which seems rather to have grown into usage than to be founded in any settled or original principle peculiarly applicable to the representatives of the people. But as the object of this power is the controul and correction of abuses, and

the redress of grievances, it by no means authorizes the assumption of judicial functions, and it should never be allowed to treat upon the administration of justice, criminal or civil. It is of the utmost importance that all authorities, of whatsoever nature, should, in practice, keep within the bounds prescribed to them by the constitution. No despotism is so hostile to liberty as that of indefinite power. And such power is infinitely more to be dreaded in a popular assembly than in a monarch. The Commons should, therefore, take care lest they be tempted, by their freedom from restraint, and their exemption from responsibility, to consider themselves as judges in cases which may come before them in their inquisitorial character. *They should remember that they cannot constitutionally pronounce either upon the guilt or the civil rights of any individual.* And if they suffer themselves to assume judicial functions, they will not only violate the constitution, but also invite so many applications to them under the pretext of inquiry, that a function which was given them only to be exercised in extraordinary occasions will, by its perversion and abuse, encroach upon the ordinary duties which are the main object of their institution; and, as has been said by a writer too well known to be named—*The medicine of the constitution will become its daily bread.*

“But it has been said, that the sacred maxim of justice, so dear to the British Constitution, was not violated in the case of Lord Melville: that his lordship was not condemned unheard; that, on the contrary, he had a full hearing, a fair opportunity of self defence, before the commissioners of naval inquiry, whose report was the ground work of the censure passed upon him by the resolutions of the House of Commons. Is then this grand and fundamental maxim of universal justice, that no one should be condemned unheard, satisfied, if the party be heard before one tribunal and condemned by another? Rather is it not a mockery of justice so to combine that maxim, or to suppose it capable of any other meaning than that the party must have a fair opportunity of meeting the charge, and those by whom it is preferred, in the very tribunal in which it is to be decided; that he must there have every facility afforded him of convincing those who are to be his judges, that he ought not to be found guilty of what is alleged against him? In this sense, certainly, Lord Melville had not a hearing.

“The Romans seem to have had far more correct notions upon this subject than appear to prevail in our House of Commons. We are told by high authority, that “*it was not the manner of the Romans to deliver any man to die before that*



he which was accused had the accuser face to face, and had licence to answer for himself, concerning the crime laid against him. — *Acts xxv.*, 16.— This was the nature of a hearing *de jure Romano*. But Lord Melville was consigned to the most cruel pangs of reproach and obloquy, far more painful than death itself, without being allowed to face an accuser, without having licence to answer for himself in the assembly by which he was pronounced to be guilty, nay, without being apprized that any crime was laid against him."

"When commissioners, or committees, nominated with a view to reform or economy, become the accusers of the person whom, for the sake of obtaining these objects, they are obliged to examine, they not only step out of their province, but are guilty of the most unconstitutional abuse of the powers vested in them. Their censure is swallowed with such extreme avidity by the public, that it is scarcely possible to remove the prejudice thereby excited; even an injurious insinuation coming from such a quarter, and following what is fallaciously supposed to be a regular investigation, is sufficient to open the floodgates of calumny upon the best characters, and to overwhelm the reputation of those who have not been legally proved to have done any thing deserving of reproach. It is, therefore, much to be feared lest such commissioners and committees, perceiving how much their own popularity depends upon the quantum of abuse with which they can gratify some of the worst passions of the public, may be tempted, by the pursuit of so fascinating an object, incautiously to sacrifice the credit and character of the individuals whose conduct and transactions are submitted to their investigation; and lest, in the ardour of such a pursuit, overlooking not only candour, but even truth and justice, they may, however pure their intentions, be insensibly drawn on from error to misrepresentation, and at length be guilty both of the *suppressio veri* and the *suggestio falsi*.—To preserve them from the temptation of acting in such a manner, they should confine themselves to the objects for the sake of which they are instituted.

"When such bodies employ the powers with which they are entrusted in an inquisitorial manner—when they convert the answers which they themselves have drawn from the individuals examined before them into grounds of inculpation—and thereby expose those individuals to public indignation—they are the occasion of far greater abuses than any which they are appointed to correct. They then become an inquisition of the very worst kind—one which extorts from persons whom the law presumes to be innocent, (and who, probably, if regularly put upon their trial, would, like Lord Melville,



prove to be so,) not proofs but presumptions of guilt, presumptions, too, which, by such a course of proceeding, are made to have all the effects of proofs. Practices of this nature lead, also, to frustrate the very objects for which such bodies are instituted, and the attainment of which is of incalculable importance. Those objects, indeed, involve the best modes of reform. They secure the ends of government without its rigour. They operate by means of prevention, without the severity of example. But they can be attained only by a calm, patient, *undeviating* pursuit. If, however, instead of steadily adhering to such a course—the only one which affords a cause of success—boards of inquiry assume the character of inquisitors and accusers, they will render themselves odious and intolerable, they will forfeit the public confidence, and they will close those channels of information, through which alone they can hope to render any effectual service to the state. Such boards, acting in such a manner, may terrify, but they will not reform. They may harass, but they will not correct. And they will deprive the public of the service of men of real respectability, who would not choose to be subjected to an investigation, before which the best character has no security, and innocence itself an ineffectual protection.

“How far the foregoing observations are exemplified in the case of Lord Melville, is a question which must be left to the decision of the intelligent reader. Certain it is, that, in that case, the resolution of the House of Commons of the time, pronouncing his lordship guilty of a gross violation of the law, and a high breach of duty, was a violation of the first principles of justice, and of the most sacred maxims of the constitution. Happily, may it not be said providentially, the result displays, in the most striking and impressive manner, the danger of a departure from established forms. The nobleman in whose instance those forms were sacrificed, and who was, in consequence, most deeply wounded in those feelings which are ever most acute in minds that are most susceptible of virtue and honour—feelings, the anguish of which, in such minds, renders even martyrdom an enviable lot. This nobleman, upon a full and regular investigation of his case, was acquitted of all the charges preferred against him, and in particular, of that very charge of which the House of Commons had assumed him to be guilty, and which that House made the foundation of a vote of censure, alike unjust, cruel, and unmerited.

“Let it not, however, be supposed, that the mischief of such proceedings is confined to the individuals who immediately suffer from them. They are inexpressibly injurious to the best interests of the state, and they tend ultimately to its

subversion. All constituted authorities, however high, the Commons as well as the Lords and the King, are morally bound to respect the principles of the constitution ; and this *moral* obligation is particularly binding upon the House of Commons, on account of its peculiar character and functions, as the grand bulwark of freedom, and defender of the rights of the subject, to which those principles are inseparably allied. Such, indeed, are the real value and importance of that House—so essential is it to the secure existence of genuine freedom—so necessary is it as a restraint upon power, and a check to corruption, that to maintain its privileges should be an object of the utmost solicitude to every lover of the constitution. But if that House, availing itself of its high and uncontrollable powers, and of its irresponsible situation, should act arbitrarily and oppressively, and invade those rights of which it professes to be the vigilant defender, then it would give a mortal wound to that constitution which it was intended to preserve and to perpetuate : then would it prove, not the guardian, but the subverter—not the sanctuary, but the tomb of liberty."

Having thus disposed of the first report of the Committee of Grievances, I shall next proceed to consider the general messages sent to the Assembly by his Excellency the Governor in Chief, respecting the regulation of the Currency of the Province, and shall attempt an examination of the proceedings had in relation to that important subject.

## NO. IX.

## CURRENCY.

*Money is the measure of Commerce, and of the rate of every thing; and, therefore, ought to be kept (as all other measures) as steady and invariable as may be.—Locke's considerations of the lowering of interest and raising the value of money.*

THIS important subject having been brought under the consideration of the two branches of the Provincial Legislature, in the speech of his Excellency Sir James Kempt, the late Administrator of the Government, at the opening of the Legislature on the 22d day of January, 1830—was considered in special committee of each of the Houses, whose reports are now before the public.—Very shortly before the close of the session of the Legislature, a bill was introduced, and passed both Houses, and received the sanction of the then Administrator of the Government, regulating the value at which certain coins were to pass within the Province. The measure was understood, however, to be only a partial one. The main subject was renewed the last session of the Provincial Legislature, and the following message transmitted by his Excellency to the Assembly:—

"In compliance with the request of the House of Assembly, conveyed to his Excellency by their committee appointed for that purpose, he transmits to them a copy of a communication which he has received from Mr. Commissary General Routh on the subject of the Currency. The Governor in Chief takes this opportunity of informing the House of As-

sembly that Mr. Commissary General Routh is at present absent from the province on public duty, but his Excellency, conceiving that the House of Assembly may be desirous of examining Mr. Routh on the subject of the Currency, he will take care to give to the House the earliest information of the return of that officer to Quebec.

AYLMER, Governor-in-Chief.

Castle of St. Lewis, Quebec, Feb. 9, 1831."

The document referred to in this message is as follows:—

COMMISSARIAT—CANADA, }  
Quebec, Dec. 3, 1830. }

"SIR,—Adverting to the correspondence which took place in January last, and the measure which was before the Legislature in regard to the Currency, though too late in the session to produce a result, I think it my duty to lay before his Lordship the Commander of the Forces the enclosed reports, which detail the progress then made in it in both Houses. One of the obstacles which retarded the settlement of the question was the difficulty of determining the new sterling rate of the dollar, the present sterling rate being 4s. 6d., on which the exchange is computed. This rate is acknowledged by all parties to be incorrect, for the dollar intrinsically never possessed that value; but there is not the same concurrence of opinion in regard to the true value which should be assigned to it. It is an essential point to establish—for, unless it be justly ascertained, the British silver and gold coins can never impartially compete with it in circulation. I do not recommend the exclusion of any coin, nor of bank notes, but there should be a ratio and a par established for all, so as to give to each a fair competition, and on the experiment now made, the wisdom of the Legislature may hereafter determine.

"My own opinion remains unaltered as to the true sterling value of the dollar, which I consider to be 4s. 2d.; and I cannot avoid submitting to his Lordship an extract of the report of a committee of the Senate of the United States, in which this subject is considered. Its reasoning appears to me to be just and conclusive. The French crowns are likewise overvalued, and their rate requires revision; but, in fact, the sum in this coin is so inadequate to the increasing wants of the province, and the coin itself so old, with no means of adding to it, that if a convenient and advantageous arrangement could be made, it would be better to call it in altogether.

"The peculiar inconvenience under which this province labours, is the want of a metallic colonial currency. The banks meet this inconvenience by a supply of notes—for in a commercial country there must be some means of barter; but this facility, if it continues to be exclusive, is dangerous: for it must encrease with the encrease of trade, and, therefore, though a valuable resource, it should be subject to controul. No national paper can keep pace with coin, however pure or solid it may be—whether free or forced, it is only the sign, not of riches but of credit! It never can have the exact value of its model; and its encreasing circulation only proves the want of that specie it represents. Paper money may be dispensed with, coin cannot; and the danger is inevitable, if the former is made the exclusive intermediate between all articles of exchange. It is, therefore, essential that there should be some colonial circulating medium, that both being current together, both may become a saleable commodity, and the real value of coin operate as a check on the accommodation of bank notes. If nothing is done, a case may arrive hereafter, in which an institution maintained by private individuals, but holding a place in every transaction of interest, may acquire an influence as extended as that of the Legislature itself.

"The banks are obliged to keep up a deposit of coin; but does it follow that its circulation is the consequence? It is unnecessary here to enquire into the cause—the fact is understood that it does not circulate.

"The British government transactions (being real transactions without accommodation) are all in coin, which generally makes a difference in exchange of one or more per cent to its disadvantage. If a sudden large demand for specie arises, the banks are the most ready competitors, having the money at command. A merchant requires time to import it. Frequently there is no importation at all. The Contractors on the Rideau Canal and elsewhere, instead of receiving cash, take a draft on Montreal, which they dispose of at a premium for bank notes, the draft being payable in dollars on presentation.

"The balances in the military chests in Lower Canada, including Bytown, average from £150,000 to £200,000 sterling, but this sum does not circulate, for specie, in consequence of its scarcity, bearing a premium, is bought up immediately for duties, treasury bills or other commercial purposes. This effect might be obviated in part by importing specie direct by this department, which generally can be done on better terms than by negotiation in the province. As the

question now stands, the end of the Commissariat cash payments is to circulate bank notes.

“ Another obstacle to the bill last year, looking to its possible effect on the price of commodities, was the disinclination to adopt sterling as the currency. I think it would be useful as facilitating the intercourse with Great Britain, which is the source of its credit and mercantile prosperity. But I do not wish to interfere with these opinions or the use of Halifax currency, though it appears to me to be more an attachment of habit than of interest. It would be sufficient to declare it lawful to make bargains and to sue in court in sterling.

“ Under these considerations, I think it right to ask the reconsideration of the question, but with no intention to urge any thing to which there is any reluctance to accede. If the legislature should think it expedient to assign a legal value to the British silver coin, I venture to observe on it that its circulation in the province will depend on the justness of that rate when compared with the other coins in competition with it. If it is too low, it will most probably find its way back to England.

“ In conclusion, I beg to advert to an opinion which prevails with many who consider a further circulating medium to be unnecessary, and refer to the United States as an example of the success of paper currency. The case is not parallel. The United States have a national metallic currency and a national bank. The banks, on which this opinion is founded, were first established (to assist the clearing and settling of new lands) in small villages, and with a limited circle of credit. They were then indispensable, and represented by common consent, the industry of the community; indeed, these banks are the joint property of the community which supports them. They were not applied to commerce—their number has greatly increased—but that very number prevents any one from becoming powerful or dangerous. The notes of these village banks are scarcely known out of their immediate vicinity. In a modified sense, they would probably be applicable to these provinces and advance their developement. Still it cannot be denied, that in encouraging every description of enterprise, they have substituted in the room of an honourable industry a gambling spirit of speculation, which always tends to demoralize a country. In fact we see only the progress, not the result of the experiment; but admitting its full success, a provincial metallic currency is not the less expedient; it is a wise precaution to have something real where so much is nominal. It is the foundation of credit. It is the advantage



possessed by the United States from whence these opinions are exemplified.—I have the honour, &c.

R. J. ROUTH, C. G."

Extract from a report of the United States Senate to which had been referred an enquiry into the expediency of establishing an uniform national currency, which has been presented and published, referred to in the foregoing letter of the Commissary General.

"Exchange on England, it is asserted, is now more than one per cent in favour of the United States, although the real fact is entirely disguised in the common forms of quotation.

"It would lead the committee too far from its present purpose to explain that the original estimate of the American dollar as being worth 4s 6d, that therefore the English pound sterling is worth 4 dollars and 44 cents, is wholly erroneous, and occasions a constant misapprehension of the real state of our intercourse with Great Britain. The Spanish dollar has not for a century been worth 4s. 6d, the American dollar never was; and whatever artificial value we may assign to our coins, is wholly unavailing to them in the crucibles of London or Paris. According to the latest accounts from London, at the close of December last, the Spanish dollar instead of being worth 4s 6d. 5½ pence, was worth only 49½ pence. The American dollar at least ½th per cent less, so that to produce 100 times 4s 6d, it would be necessary to send to England, not 100 dollars, but 109 1-16 Spanish dollars, or 109½ of the United States dollars.

"If to this be added the expense and charges of sending the money and converting it into English gold, it will cost 111; so that 111 is at this moment the real par of exchange between the United States and England. If, therefore, a bill at sight can be procured for less than this sum, or a bill at sixty days for one per cent less, say 110 per cent, it is cheaper than sending silver, that is to say, he who has silver to send to England, can purchase a bill on London for a greater amount than he would get if he shipped the silver itself; and of course exchange would be in favour of the United States against England. Now such bills can be bought at a less rate by more than one per cent in every city of the United States."

This message and the accompanying documents are so intimately connected with the proceedings had in the previous session, that any subject wherein these are omitted must necessarily be incomplete.

That part, then, of the speech of his Excellency the Administrator of the Government which had reference to the state of the currency, was, as early as the 26th January, 1830, referred to a committee of five members, to report thereon by bill or otherwise.

The first proceeding of the committee was to order that the Receiver General of the province, the Commissary General of his Majesty's forces in Canada, and the Cashiers of the Quebec and Montreal Banks, should be requested to transmit, with all convenient speed, a statement of the number of pieces of each of the gold and silver coins mentioned in the list accompanying the order, which may have been in their possession on the first days of each month in the years 1828, and 1829, or give such information on the subject as might be in their power.

To this request the Commissary General returned a written answer, wherein he states that no coins are received into the military chest except dollars, half dollars and English money. That the French money passing at a small fraction higher than at the rate at which it is issued in army payments, and at which rate only it should be received, was never tendered to that department. That the only gold coins which were ever offered to the commissariat were sovereigns, but the amount was inconsiderable, and they found their way into the military chest only because they were received as English money, and admitted to the same advantage with the British silver coin in exchange for bills on the Treasury; and that the aggregate amount of the specie in his charge at the different posts in Upper Canada, averaged about £200,000 sterling, taking one period indiscriminately with another.

The Cashiers of the Quebec and Montreal Banks transmitted the statements required, as also did the Receiver General of the province.

The committee also were put in possession of two several letters from the Commissary General, addressed to Lieutenant Colonel Couper, Military Secretary, dated 1st October, 1829,

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27th January, 1830, and a memorandum dated 6th February, 1830.

The communications from the Commissary General, transmitted by his Excellency's above message, being manifestly supplementary to the documents, it is proper that they should be inserted here.

“COMMISSARIAT—CANADA, }  
Quebec, Oct. 1, 1829. }

“SIR,—I have the honour to solicit the interposition of his Excellency the Commander of the Forces to bring under the consideration of the Provincial Legislature the measure of the British silver coinage, so as to promote its gradual introduction into these provinces, and ultimately to establish it as the circulating medium of the colony.

“The disadvantage under which this colony labours in the absence of a circulating medium of its own, is obvious, being dependent upon a neighbouring power, not only for the specie necessary for the common barter of its commodities, but its exchange subject to and ruled by the commercial rates of that power, and the chief part of its negotiations and remittances effected by means of that channel through foreign interests. In granting a wholesome coinage, possessing the value which it represents, his Majesty's government offer to this colony the means of resuming their independence, and with it all the advantage and security of the government negotiations.

“To explain this subject, it is necessary to enter into some previous remarks on the state of the currency.

“The French crown, which is current in Canada at six livres, passes in France for five livres and twelve sols only; the half crowns are defaced, and the impression scarcely to be distinguished, so that out of the province they are received at 2s. 6d. currency only. The pistareens, or shillings, pass for seventeen cents in the United States, and here are current at twenty-four sols. In New Brunswick, latterly, a resolution has been agreed to amongst the inhabitants to receive them at twenty sols, and not more than one dollar in change. Thus all these coins find their way into Canada, and these provinces must ultimately sustain the loss. The dollar of the United States is a good coin, but rarely seen here, the American coin current in this colony being chiefly half dollars, which are inferior in value to the whole dollar.

“Many of the Canadian farmers have a habit of hoarding their money in coin, instead of employing it at interest or in

extending their concerns, and if this coinage were suddenly called in, it would oblige such individuals to disclose the state of their affairs, and therefore would be unpopular; but it is impossible to continue indifferent to the progress of this evil; and a measure might be adopted so as to obviate this inconvenience, allowing time, and to fix a period for the reduction of its present rate to its true value.

"It is equally necessary to exclude dollars and foreign money as a legal tender, for there cannot be two circulating mediums, or if there are, the worst and least valuable will remain in the province, and the best be applied to the purchase of bills for exportation or other commercial purposes; but with regard to the exclusion of these coins, of which the Commissariat are the importers, the circulation of the British silver money would confine the public negotiations within the province, to its great interest and advantage, and would, of itself nearly, and with time, altogether produce the effect.

"It does not appear to me that any real difficulty can arise in the settlement of seignioral rents or mortgages, by changing the currency, whilst the corresponding values are fixed and established: every purpose and object of calculation would be thereby secured.

"The chief difficulty which prevents the circulation of the British silver coinage, is this:—

"In itself being the currency of the realm, it opens a ready means of remittance to England; and in order to prevent its shipment and to encourage trade, the Lords of the Treasury have ordered it to be exchanged for government bills, at a low premium, barely equal to the cost of freight, commission, insurance, &c.; on its remittance, unfortunately, this facility recoils against the measure. The advantage of these bills at the present rate of exchange increases the value of the money which is collected together by means of the local bank notes, of which, and not of this coinage, it promotes the circulation, and renders its introduction an advantage to the banks, and not to the community who support the banks.

"I do not mean to throw any imputation upon the banks, but to shew the course which this measure has taken, and the effect which the issue of these small notes of one dollar has upon the currency. In all countries, it has been found necessary in order to keep any specie in circulation, to restrict bank notes within given limits; it is the difference between the nominal and real value, and if the first, except in extreme cases, is abused or extended too far, the specie of real value will disappear from the circulation.

"There surely can be no subject more worthy of consideration than the circulating medium of the province.

"We are in that state, that the colony has no currency of its own, but that, which is rated too high, and even this is so insufficient in amount, that value is chiefly represented by local bank notes. Out of this state of the currency, the obligation of the bank to pay their notes in coin is suspended, because there may be a physical impossibility to do so, from the want of specie, and the real capital of a bank may be employed in its own speculation, whilst the public are trading on its paper. The general respectability of the banks is unquestionable, but each shareholder is only responsible for the amount registered in his name.

"Thus, whilst these bank notes are spread in such small amounts they are employed to bring up the British silver money, which is excluded from the circulation by the very advantage of the very treasury bills granted to redeem it, and keep it in the colony, both being nominally current at the same rate, for the common purposes of life, but the money bearing a premium or the notes a discount, the least valuable of the two remain in circulation.

"In order to give effect to the intentions of his Majesty's Government, I venture to propose the following measures for his Excellency's consideration :

"It is expedient to fix the corresponding values of the English coins, and to make them a legal tender at these rates.

"It is expedient to establish sterling money as the money of account, and exclusively recognizable in courts of law.

"It is expedient to restrict the bank notes on the renewal of the several charters to sums of five pounds sterling, and to prevent their issue under that amount.

"It is expedient to repeal the provincial act of parliament which fixes the rate of the Spanish dollar at 4s. 6d. sterling, establishing it for the purpose of calculation at 4s. 4d. sterling, which is found to be the intrinsic value of that coin, whilst such coins shall remain legally in circulation.

"It is expedient to fix the rates at which the old French coins and pistareens are to pass, and to name a period from which that regulation shall commence.

"It is expedient to name a period after which foreign coins shall not be considered a legal tender, or otherwise than bullion.

"The three first measures appear to me to be indispensable, in order to maintain the new coinage in circulation, though possibly that result might not be immediate.

"If any facility is lost to the public, which I cannot anticipate, by restricting the issue of those small bank notes, it is surely more than counterbalanced by the certainty of government bills, accessible to all, at a known rate of exchange,



without fluctuation, obtained at a low premium, and securing the remittance. Besides, in foreign relations, the exchange is always in favour of the country possessing the soundest currency.

"I am persuaded that his Excellency will give every consideration to this subject, so important to the growing interest and prosperity of these provinces, and to the protection of those of the mother country, the main source of the capital which gives action and influence to the developement of the colony; and I am satisfied that the opinion which his Excellency recommends will be the best adapted to prevail.

"But if, under any other view of this proposal, the Colonial Legislature should decline extending to it the necessary support or protection, it may become a fit subject of consideration with his Majesty's government to modify or to abandon it. Hitherto, in the experiments, a great advantage has been uselessly sacrificed in the exchange; for neither has the community derived a benefit, nor the measure prospered. If it should be abandoned, the bills now granted in exchange for this money would cease, the money itself would find its way in remittances, or be re-shipped to England, the public negotiations, as formerly, must chiefly be effected out of the province, and the present state of the colonial currency would continue to exist with all its evils in full force."

"COMMISSARIAT—CANADA, }  
Quebec, Jan. 27, 1830. }

SIR,—Adverting to my letter of the 1st October, 1829, and as the subject is now under the consideration of the Legislature, I think it my duty to bring under the consideration of his Excellency the Commander of the Forces, some further reasons, which, in my opinion, call for the abolition of Spanish and American dollars, as a legal tender, until their true value shall be better defined and regulated, as compared with sterling money.

The following is the view which I take of this question:—

"The British silver coin as now regulated, can only be considered a token; it passes current without reference to its intrinsic value. It may in part be assimilated to a bank note written on silver. In law it is a legal tender of 40s only, but as the bank of England receives it freely in any quantity, and as the public in England do the same practically, it becomes as the notes of the bank are, a sufficient tender, and represents, as they do, *sterling value*, that is "sovereigns at the Mint price."



"The Spanish dollar, though actually containing more silver than is contained in 4s. 4d. British money, (the latter being subject to the seigniorage which reduces its value to 3s. 11d.) has not in England the same conventional advantage. It does not represent *sterling value*, it is a mere marketable commodity, and, for many years past, the price has not exceeded 5s. an ounce, or 4s. 2d. the dollar. Indeed 5s. an ounce may be considered the ordinary English market price of silver of the same quality as that which the mint regulation fixed at 5s. 2d.

"In the colonies the dollar has not averaged more than 4s. 4d. probably from the course of remittance having been generally towards England, as the difference (£2 per cent.) is about the cost of freight.

"Be this latter point as it may, practically any man in the colonies having a debt of £20 to pay in England, may discharge it in full by sending home twenty pounds in British silver; but should he send dollars they will only sell at 4s. 2d. each, and instead of 92 dollars at 4s. 4d. he must forward 96 dollars at 4s. 2d, making an annual loss on the remittance of dollars of 4 per cent., or 16s. on the single transaction.

"On the same principle, if an individual in the colony owe £20, and has that sum in British money, he can exchange it with any one wishing to remit to England for dollars at 4s. 2d, and without a breach of the order in council, pay his debt, rating the dollars at 4s. 4d, and thus make a like gain of 4 per cent.

"The current value of the Spanish dollar in the colonies, having been rated at the English mint price of silver, and that price being 2d. per ounce more than the market price, had been obviously overvalued at 4 per cent. : what is really worth only 4s. 2d. in England, pays 4s. 4d. in the colonies, equally as well as 4s. 4d. British money, which conventionally passes for and in point of fact, can only be had in England in exchange, for a value equivalent to 4s. 4d.

"A merchant in the colonies requiring to make a remittance of £100 to England, is precisely in the same situation whether he receive dollars at 4s. 2d. or British coin at 4s. 4d., he has the same freight to pay in either case, and both will yield the same value on their arrival; but if he had a debt to pay in the colony, the dollars will pay £104, and the British silver only £100.

"Under these circumstances, it is necessary to enquire whether British coin will not be sent to England, and dollars be retained in the colonies. Whether in point of fact, the importing merchant cannot afford to sell to the shop-keeper

from three to four per cent cheaper when paid in British coin, than when paid in dollars at 4s. 4d. Whether the shop-keeper will not, in consequence, hoard the British money for the purpose of such payment ; and whether the merchant will not return it to England or pay it into the military chest for bills

"Is not the same cause equally operating to prevent the return of British silver to the colonies? Surely every individual going from England and taking money, will provide himself with Spanish dollars, which he can buy at 4s. 2d., and pass in the colonies at 4s. 4d., whereby he obtains a profit of four per cent., rather than English silver coin, which will only pass current for what it actually costs him.

"To conclude, I infer from this reasoning, that in adopting English money as the circulating medium in Canada, Spanish and American dollars must be excluded as a legal tender, unless their value be reduced to the par of English money, to 4s. 1d. or 4s. 2d. per dollar, and this is evidently a better regulation than to give a legal circulation to the British coin, above its present value, which might expose this colony to an influx of base money from the United States.

"I have reason to believe that the Lords of the Treasury are now aware that the Spanish dollar has been overrated, and that this part of the subject either is now under consideration, or will speedily be re-considered."

#### A MEMORANDUM ON THE CURRENCY QUESTION.

"In the renewal of their charters, the banks have no claim in their behalf against sound policy or the general good.

"Banks are obliged to redeem their own notes, and a good and sufficient circulating medium would enable the country to enforce it. If they cannot be redeemed at the will of the holder, the institution is bad ; for on their issue the banks have already received value for their notes.

"I think that it is clear, that the issue of the one dollar bank notes, must have a great influence in keeping English or any other coin out of circulation. I believe, however, the chief profits of the bank to arise out of the issue of these notes ; and that comparatively speaking, there are scarcely any notes in circulation above ten dollars. I should apprehend, that any sudden law, suspending the issue of these small notes, would distress the banks, and perhaps the public ; but a law to come gradually into force, subject to revision by the House of Assembly, to commence with the abolition of the one dollar notes, and year by year to extend to the exclusion of

all notes under five dollars or one pound sterling, or thereabouts, would be a wise and necessary regulation in the new bank charters. Experience would then shew the value of such law, and the expediency of curtailing or extending its provisions. As respects money advanced on mortgages, the following reflections occur to me. The advance is made in a deteriorated coin, rated above its value, but which is now to be paid in a sound currency, commanding the actual value it represents. Probably the sum so advanced may have been impressed at its real value also, that is, its deteriorated value may have been taken into consideration, and that the payment in sterling will meet the case. But suppose it otherwise, the dollar, or any other given coin, will serve as a pivot for calculation. If a hundred dollars have been lent on mortgage, the creditor can only fairly claim the same number of dollars in payment, or what will procure that number of dollars. It is of no importance that the sterling sum is altered in name, if the real amount is the same. To explain my meaning—100 dollars, now called £25 currency, are lent on mortgage; the nominal value of the dollar is reduced by the change from currency to sterling, and the 100 dollars which represented £25 currency, at 5s. per dollar, being now rated at 4s. 4d. sterling, (or any other given sum) represent £21 13s. 4d. sterling; but, in paying this last sum, it will be evident that the original debt of £25 currency is liquidated thereby, for the payment is made in the same number of dollars, or in coins equal to the value of these dollars. Paley extends this principle farther: "where the relative value of coin is altered by an act of the state, if the alteration would have extended to the identical pieces which were lent, it is enough to return an equal number of pieces of the same denomination, or their present value in any other; as if guineas were reduced by act of parliament to 20s.—so many 20s. as I borrowed, guineas would be a just repayment."

"The British government have in view the political tendency of this introduction of English money into the colonies. A similarity of coinage produces reciprocal habits and feelings, and is a new chain and attachment in the intercourse of two nations."

"The Romans, and all ancient and modern nations, have acted on this principle, particularly the French in the late war. The French coins pass throughout the Mediterranean and great part of Germany, and it certainly had the effect of increasing the intercourse of those countries with France."

The Commissary General was also examined before the committee upon some details connected with the plan pro-

posed by him, not sufficiently material, however, to render necessary the insertion of his answer here; and the documents above referred to, with the examination of the chairman of the committee, constitute absolutely the whole information that the committee felt it necessary to lay before the House upon this extensive and important subject. That no part of these materials may be wanting, we insert here the answers of the chairman of the committee; they are as follow:—

“By the proclamation of Queen Anne on the 18th June, 1704, it was declared that all foreign coins should stand regulated according to their weight and fineness, and according and in proportion to the rate limited and set for the pieces of eight of Seville pillar and Mexico. This proclamation was enforced by the act of Parliament 6th Anne, c. 30, with a promise that no person should be compelled to receive any of the coins at the rates mentioned in the proclamation. It was also declared that her Majesty might give her assent to any law hereafter to be made in any of the colonies for settling the current rates at which such coins should pass within the colony where such law was made. This act has not been repealed, under its provisions it would appear that the Provincial Legislature has the power of fixing the current rate, at which coins shall be a legal tender, but that it is restrained from attempting to give them a *nominal sterling value*, other than the intrinsic value in sterling money of Great Britain, according to the quantity of standard silver contained in each, and the mint regulation in England. By sterling money of Great Britain, I understand the money of account of Great Britain, which is not an imaginary money, arbitrarily fixed as the currencies of the colonies, but is represented by real coins, and cannot be altered by any colonial law, nor in any other way than by an act of parliament altering the intrinsic value of the coins. In Sir Isaac Newton's table of Assays, published by authority, in 1740, it is stated that the “*Piastre of Spain*,” or Seville piece of eight, weighed 17 pennyweights 12 grains, was 1 pennyweight worse than standard, and its intrinsic value in sterling, 4s. 6d.; this was the coin formerly in circulation as the Spanish dollar, and in fixing the monetary par of exchange by the ordinance 17 Geo. III, c. 3. The Governor and Council appear to have been guided by the proclamation before referred to, and by a reference to the intrinsic par ascertained by comparing the current rate of the

dollar as determined by an ordinance of the same year, cap. 9, with the value in sterling, according to its weight and fineness.

"The guinea weighing 5 pennyweights 8 grains, was declared current at 23s. 4d. There was thus no difference between the intrinsic par of exchange when computed in silver, by comparing the current value of the silver coin generally in circulation with its value, according to the mint price in England, and the same par when computed in gold, by comparing the current value of the guinea of standard weight with its sterling value as issued from the mint. The monetary and the intrinsic pars also agreed.

"In 1772 the present Spanish dollar was first coined, and its weight and fineness were reduced; the former to 17 pennyweights 8 grains, and the latter to 8 pennyweights worse than British standard; its intrinsic value was thus rendered rather less than 4s. 4d. sterling; but as it took some years for the the old dollar to disappear, and the new to come into general circulation, the inconvenience arising from the consequent difference between the par in gold and the par in silver was not at first greatly felt.

"In 1796, the Provincial Legislature passed a bill for better regulating the currency; and under the mistaken idea that the mere declaration of the Legislature was sufficient to give a sterling value to a coin other than its contents in standard silver entitled it to, it was declared that the depreciated Spanish dollar, worth only 4s. 4d. should pass current at 5s. currency, equal to "4s. 6d. sterling money of Great Britain." For the avowed purpose, also, of preventing gold being exported, the weight of the guinea was diminished to 5 pennyweights 6 grains, while its current value was maintained at 23s. 4d.; the consequence was, that the intrinsic par of exchange in gold was different from the intrinsic par in silver, and both differed from the monetary par; and three different pars being thus established, the rate of exchange was liable to sudden fluctuation, and the silver coins, from the relative value fixed by law, necessarily drove the gold out of circulation.

"In another point of view, the operation of the law also defeated its object, as by reducing the weight of the guineas below the standard, a direct encouragement was given to export it to England, where guineas of standard weight could not be passed for more than 21s. sterling, while light guineas were worth from 23s. to 30s.

"Another law, repealing the ordinance and the act of 1797, was passed in 1808. The same error, in attempting to give



an increased nominal sterling value to the dollar, and in diminishing the weight of the guinea, was then committed; to which was added an enactment permitting the current gold coins to be paid by weight, as bullion, in sums not less than £20 currency. Thus the monetary par remained at £100 sterling, for £111 1-9th currency. The intrinsic par in dollars was £100 sterling for £115 5-13ths; and in guineas £100 for £113 39-42. I would propose that the sovereign be taken as the standard measure of value in gold, and that it be declared current at 23s. 1d. currency; that the Spanish dollar be a legal tender to any amount, and that it be continued current at 5s. currency; that £100 sterling be declared equal to £115 5-13ths, Quebec currency, and that the current value of all other coins be fixed in proportion to their value at the mint in England, established by the mint regulations; and the assays made by the King's assay master in England, and the *Essayeur du Commerce* at Paris. The monetary par and the intrinsic par in silver would then be £100 for 115 5-13ths, and the intrinsic par in gold £100 for £115 5-12ths—making a difference in favour of the gold of 5-156ths of a pound sterling. The par of exchange with the United States would be, with reference to the mint regulations of the States, 5s. Quebec currency for the American dollar, 100 cents."

Upon the foregoing slender information, the committee felt themselves authorized to report, on the 9th March, 1890, the draught of a bill, together with the evidence taken before the committee.

The following is an abstract of the bill:—

By the first clause it is provided, that from and after the passing of this act, £115 and 5-13ths of a pound of the current money of this province, shall be equal to £100 sterling money of Great Britain.

The 2d clause provides, that the following gold and silver coins, and none other should pass current at the rates following, that is to say—

OF GOLD COINS.

The British sovereign of standard weight, at 23s. 1d. currency.

The British half sovereign, at 11s. 6½d. currency

OF SILVER COINS.

The British crown, at 5s. 10d. currency.

The British half crown, at 2s. 11d. currency.



The British shilling, at 1s. 2d. currency.

The British sixpence, at 7d. currency.

The Spanish milled dollar, weighing 17 dwts. 8 grs., and being in fineness 8 pennyweights worse than British standard, at 5s. currency.

The Spanish half dollar, weighing 8 dwts. 16 grs., being of the same fineness, at 2s. 6d. currency.

The Spanish quarter dollar, at 1s. 3d. currency.

The Spanish piece of 8th of a dollar, at 7½d. currency.

The dollar of the United States of America, at 5s. currency.

The half dollar of the United States of America, at 2s. 6d. currency.

The French crown, weighing 18 dwts. 18 grs., at 5s. 6d. currency.

By the 3d clause—The before mentioned gold and silver coins, the Spanish milled dollars, the Spanish half dollars, the dollars of the United States of America, and the French crowns, are made a legal tender at the aforesaid rates, in payment of all debts and demands to any amount whatever.

By the 4th clause—Spanish quarter dollars and Spanish pieces of an 8th of a dollar, are made a legal tender at the aforesaid rates, in payment of all debts and demands to the amount of £10 currency, and no more.

By the 5th clause—British copper coins, it is declared, shall pass current, and be deemed a legal tender in payment of all debts and demands whatsoever in this province, according to the due and proper proportion of such copper money to the British silver coin hereinbefore mentioned; provided always, that no person shall be obliged to receive more than the sum of 1s. currency of this province in copper money, and that, in all payments not exceeding 1s. current money aforesaid, ten pence halfpenny shall be deemed equivalent to one shilling in British copper coin currency, and all lower denominations in the same proportion.

By the 6th clause—A sum of ..... is proposed to be appropriated to defray an expense which may be incurred in and about the importing from England into this province of any quantity of copper coin, of which it may be the pleasure of his Majesty, his heirs or successors, to order the coinage, for the purposes of circulation in this province, as current money of this province.

By the 7th clause it is provided, that the Receiver General of this Province shall, between the ..... day of ..... and the ..... day of ..... next ensuing the passing of this act, receive from all persons whatsoever, all such Spanish pistareens and French half-crowns as may be brought and de-

livered to him, and shall pay and deliver to the persons bringing the same, such sum or sums of the lawful currency of the Province, as shall be equal to the present nominal value of the pistareens and French half-crowns respectively so brought to him, that is to say, at the rate of 1s. currency for each pistareen, and 2s. 9d. currency for each French half-crown.

By the 8th clause it is provided, that from and after the said ..... day of ....., it shall be lawful for the Governor, Lieutenant Governor or person administering the Government, to cause all such pistareens and half-crowns to be sold as Bullion, or exchanged at the Bullion price for silver, and any loss incurred by so disposing of such pistareens and French half-crowns, shall be charged against the Provincial Revenue, and allowed to the Receiver General in his accounts of the receipt and application thereof.

The 9th clause enacts, that it shall be lawful for the Governor, Lieutenant Governor, or person administering the Government, to authorize the payment out of any unappropriated monies in the hands of the Receiver General, of such sum not exceeding the sum of £ ....., as shall be necessary for carrying this act into execution; and that the Receiver General shall lay before the Governor, Lieutenant Governor, or person administering the Government, when, and as often as he shall be thereunto required, a detailed account of all his doings under the authority of this act, and shall lay before the House of Assembly, a detailed statement setting forth all his proceedings thereon.

By the 11th clause—The Provincial Acts regulating the currency, passed in the 48th and 59th years of his late Majesty, George III. are repealed.

## NO. X.

## CURRENCY.

Money is the measure of Commerce, and of the rate of every thing; and, therefore, ought to be kept (as all other measures) as steady and invariable as may be. *Locke's considerations of the lowering of interest and raising the value of money.*

## THE SUBJECT RESUMED.

The foregoing abstract is given as containing the ultimate results of the labours of the committee of the Assembly of 1830, on the Currency of the Province.

In point of fact, that bill did not pass into a law. A bill more partial in its extent, and differing in its principle, was subsequently introduced into the Assembly, passed the Legislative Council, and received the Governor's sanction. The heads of this last mentioned bill we will give at the close of this paper.

The subject was about the same time taken up in the Legislative Council, and a bill was introduced to assimilate the monies of account and circulation of this province, to the monies of account and circulation of the United Kingdom of Great Britain and Ireland, and to prevent the falsifying, counterfeiting and impairing the coins thereby made current, and for repealing the acts and ordinances therein mentioned, which was referred to a committee, whereof the late Hon. John Richardson was chairman, and his name affords a sufficient guarantee that the subject would be fully, elabo-

rately and ably investigated. The report signed by that gentleman, as chairman, bears date the 15th March, 1830, and is to the following effect:—

"The committee reported that they had to enter upon the consideration of the matters referred to them, under circumstances inapplicable to the usual procedure upon bills when committed, and therefore some enquiry into the monetary system, and its relation to our circulating medium became necessary.

"That system has occupied the attention of men of first rate talents. Treatises and pamphlets without number have been written thereon; and before their authors could come to a conclusion upon the subject, facts occurred, which either overturned or shook their premises, and left the matter in as doubtful state as before they began their attempt to find a solid foundation for the superstructure which they intended to erect.

"The bullion question in England was of this description, and the farther the committee thereon proceeded, the more unsatisfactory the result of their enquiries became, until, finally, opinions were entertained, and insisted upon, diametrically opposite to each other.

"It is not for your committee to presume to think that they can throw new light upon a subject of such acknowledged intricacy, and wherein so many have failed of arriving at any thing like certainty.

"All they pretend to is to lay before the house a statement of facts obtained from the information of others, or from their own knowledge and consideration of the subject, with some observations thereon.

"Your committee thought it expedient, in order to assist the investigation, to frame a series of questions, to be submitted to several gentlemen, namely, the Commissary General, Mr. Freer, Cashier of the Quebec Bank, Mr. Simpson, Cashier of the branch here of the Bank of Montreal, Mr. Finlay, Chairman of the Committee of Trade at Quebec, Mr. Lemesurier and Mr. Leather, merchants, and Mr. Keys, a dealer in exchange."

The questions, and the answers thereto, are inserted in the appendix, exclusive of the questions No. 1 to 20, generally submitted; some others were sent to the Commissary General, which are also inserted therein.

"The following facts were obtained from parliamentary documents, to wit: that the pound Troy of the old British silver standard consists of eleven ounces two pennyweights, or 5328 grains of pure silver, and 18 pennyweights, or 432 grains of alloy, making 5760 grains in the said pound; consequently, an ounce Troy of standard silver contains 444 grains of pure silver, and 36 grains of alloy.

"This pound weight was coined into crowns, half crowns, shillings and sixpenny pieces, together equal to sixty-two shillings sterling, which is equal to 5s. 2d. sterling per ounce.

"A new silver coinage was made under the 36th Geo. III., cap. 68, whereby, without altering the standard, as to the proportion of pure silver and alloy in the pound Troy, it was divided into 66 shillings, or 5s. 6d. the ounce, instead of 5s. 2d., as before, consisting also of crown, half crown, shilling and sixpenny pieces; and thus making an intrinsic difference of value between the old and new silver coinage, of about six and a half per centum.

"The standard of British gold coin is 22 carats fine—that is to say, any quantity of gold is divided into 24 parts, 22 whereof are of pure gold, and two of alloy. Portugal and United States gold coins are of the like purity, or nearly so. Spanish and French gold coins have a greater proportion of alloy.

"An old British crown contains 430 grains of pure silver.

"A new ditto ditto, 404 ditto.

"A Spanish and a United States dollar, as found by assays at the British mint, contain each 370 grains and a small fraction of a grain of pure silver.

"Republican and Imperial Mexican dollars are about two ounces per one thousand dollars heavier, and

No.	CURRENT VALUE	oz. dwt. gra.		REAL VALUE	s. d.
5 0	1000 Spanish dollars, including alloy, were found to weigh.....	865	1 3	415 each,	5 0
2 6	2000 United States half dollars, .....	865	18 2	207 16 200ths ea.	2 11
1 3	4000 Spanish qr. dollars, 829 10 6	829	10 6	199½ each,	1 2½
1 0	5000 Spanish pistareens, 804 1 2	804	1 2	77 9 50ths each,	0 11 8/90
5 6	1000 French crowns, coined before 1793,.....	928	0 4	445 4-100ths ea.	5 4
2 9	2000 French Half Crowns, coined before 1793,.....	863	4 6	207 1-60th ea.	2 ½

"The weights of the coins, as above, were ascertained by actually weighing the quantity thereof so specified, respectively taken at hazard.

"From those assays and weights, it is found that at the old standard of 5s. 2d. sterling per ounce, an old crown is

worth 5s. sterling, and a dollar only 4s. 3d. sterling; so that a dollar at present passes for about  $4\frac{1}{2}$  per cent. beyond its intrinsic worth.

"By the new standard, or coinage, of 5s. 6d. sterling per ounce, a new crown is made 5s. sterling, whilst it is intrinsically worth, according to the old standard of 5s. 2d. per ounce, only 4s. 8 $\frac{2}{3}$ d. sterling, being  $3\frac{1}{3}$ d. under its nominal value; whereas, in the proportion of that nominal value, a dollar would require to be 4s. 7d. sterling, or  $3\frac{1}{3}$ d. beyond 4s. 3 $\frac{1}{3}$ d. sterling, its intrinsic worth by the said old standard. If the dollar was established at 4s. 2d. sterling a new British crown would intrinsically be worth only 4s. 6d. 3-5 sterling, which in the ratio of 4s. 2d. to 4s. 6d. the present par value of a dollar would be equal to a premium of eight per centum.

"The new silver coinage being, as above said, about  $6\frac{1}{2}$  per centum inferior to the old standard, and  $2\frac{1}{2}$  per centum being, as after mentioned, the expense of the silver coinage, it is matter well worthy of consideration whether the difference be beyond a fair premium or inducement, to give preference to a national over a foreign coin, and thereby contribute to its remaining in the country.

"Mr. Muschet, an officer of the British mint, in a pamphlet written by him about the time of the Bullion Committee, states, that the expense of the British gold coinage is one and a half per centum, and of the new silver coinage, two and a half per centum.

"If the money of account and circulation were changed to sterling, the rule of conversion from the present currency would be, if the dollar were reduced to 4s. 4d. sterling, a deduction from the present value thereof of 2-15ths, or an addition of the new value of 2-13ths, or if the dollar was made 4s. 2d. then the deduction would be 1-6th or addition 1-5th part.

"It is an admitted principle that the real par of exchange between different countries, whatsoever the denomination of their coins may be, is the relative proportion of pure gold and silver contained in the coins of those countries, respectively compared with each other, and according to theoretic reasoning, the premium or discount upon bills of exchange should only be what would cover the expense of conveyance of portions of the precious metals from one country to another, insurance thereon, and commission inclusive, and adding somewhat more, for avoidance of trouble. Theory also says, that the rate of exchange will be regulated by the disproportion between imports and exports, as also by the drain occasioned by the means afforded by one country being expended in another.



"All this, however, is contradicted or rendered doubtful by facts. During the long and eventful war consequent upon the French revolution, Great Britain furnished heavy subsidies to other nations, whereby very large sums of money, raised in the United Kingdom, were sent and expended abroad; and the exchange being then almost uniformly greatly against us, the Bullion Committee ascribed the very unfavourable state of the exchange to those subsidies.

"Since the general peace the exchange has almost uniformly been in favour of the United Kingdom, whilst it is notorious that inhabitants thereof, residing or travelling in foreign countries, have expended there, from British sources, according to well grounded estimates, ten millions sterling annually, being above threefold the amount of monies sent abroad for subsidies in any one year.

"This, indeed, is inexplicable, and has confounded the most extensive and acute money dealers who are unable to assign any good reason for a fact which overturns all previous theoretical calculation upon the subject.

"All this proves that it is impossible to regulate exchange by statute, or by affixing a specific value to coins, permanently to control the rate of exchange. Such specific value may have a temporary effect, but the exchange must, and will in the end, regulate and find its level, by a combination of circumstances beyond calculation, and not susceptible of previous ascertainment.

"In all countries, however, there must be some fixed standard of reference, as to value, whether it be in the shape of a guinea, a sovereign, a crown or a dollar, or under any other denomination. In Great Britain, the general standard is gold; in some other countries silver.

"In the United Kingdom, there is no seigniorage upon gold coin, the nation defraying the expense of the coinage thereof; so that an individual carrying to the mint a quantity of standard gold bullion, will receive an equal weight in coin, but it is not so in most other countries. The British mint price of gold is stationary at £3 17s. 10½d. sterling per ounce Troy of the standard above mentioned, of 22 carats fine. A guinea from the mint weighs five pennyweights nine and one-third grains; and a sovereign, five pennyweights three and one fourth grains. This, however, does not always regulate the price of gold bullion—at least it did not so—whilst the prohibition of export of British gold coin existed.—When the price of gold bullion exceeded the mint price

of gold, the coin was melted down and exported as bullion, notwithstanding an oath was required, that it did not arise from British coin; no penalty, even that of death, will prevent exportation of specie, when such is profitable, as was evinced in the case of Spain, when such penalty existed.

"The nation being put to a very heavy expense for gold coinage, by reason of its being so often melted down, and the prevention thereof being found impossible, it was judged expedient to remove the prohibition of export of coin, and since then, it has gone abroad and returned in its proper shape, according as the state of the exchange occasioned an influx or efflux thereof, whereby the expense of re-coinage of that part which should have been so melted down, has been saved, and no injury has resulted from the alteration.

"In the United Kingdom no gold coin under an established weight, which for a guinea is five pennyweights eight grains, or one grain and a third less than the original mint weight, and for a sovereign is five pennyweights two three-fourth grains, or one half grain less than the said original mint weight, can be a legal tender; so that after a wear and a tear beyond that extent, it goes out of circulation, and requires to be received at the national expense.

"In this country this precaution against deterioration is rendered unnecessary, by the difference over or under the established weight of gold coins, whether weighed in bulk or singly, being added or deducted at a certain rate.

"As to the question of a change in the money of account and circulation, so as to assimilate the same to the money of account and circulation of the United Kingdom, from whence the commercial capital is derived, and where the chief mercantile transactions originate and terminate, your committee are divided in opinion thereon—one part considering it advisable, proper and in good policy to be done, holding that even without a pledge of redemption of the new silver coin, the benefit of the measure would exceed any possible loss thereby—whilst the other part contend, that it would be injurious, and especially if there be no pledge for the redemption of the said silver coin, at its nominal value.

"The latter think that by altering the nominal value of the circulating medium, it would affect vested interests and contracts. The former deny this, and assign as a reason why it would not do so, that for any amount the same number of dollars would be payable or receivable as before, although under a different denomination, namely. sterling instead of currency.

"As to the policy of the measure, they assert that national coin should be encouraged to circulate, but that foreign should not be excluded from payments, if made receivable, at the option of parties, and at such rates as shall give the preference or inducement of export thereto. They also assert that at present the reverse is the case, as dollars pass for  $4\frac{1}{2}$  per centum beyond their intrinsic worth, compared with British silver at 5s. 2d sterling per ounce, which they maintain to be improper.

In respect to the deteriorated coins, your committee are unanimously of opinion, that they should be called in at the public expense, under safeguards against their having been introduced into the province, in order to profit by such deterioration, and as to the reissuing thereof at rates reduced to the real value. The said rate should be under rather than over the same so as to cover further wear and tear thereof, or it would be still better to offer the same to government as bullion, and take in payment thereof the new silver coin.

"They are further unanimously of opinion, that an importation of good copper coin is indispensable, to supersede the necessity of using the trash at present in circulation.

"Those two last mentioned objects are, however, not within the competency of the Legislative Council to originate, and were introduced into the bill merely to enable the House to view the whole system together, but to be left out in a future stage of it. There is a necessity for some provision being made this session respecting those objects, else the province will become the receptacle of all the debased coin from the United States and neighbouring provinces.

"Upon the other matter contained in the bill, your committee are of opinion, (whatever sentiments the members thereof may respectively entertain as to the eventual adoption or rejection thereof, or of any immediate change in the value of a dollar at present inaccurate) that it will be advisable to drop further proceedings thereon for the present session; and this the more especially, as in the Imperial parliament, this session, there will probably be a discussion upon the question of making silver coin a national standard as well as gold, whereon differences of opinion have existed, and seem to increase.

"And also a discussion respecting the affixing a more accurate relative value between gold and silver than now exists. The former at present being by the mint regulations considered, in relation to the latter, as 15 0 7 to 1, whereas silver having gradually decreased in value in respect to gold, the real ratio is probably now about 16 to 1.

"And further it will be advisable, because the monetary system of the United States is now under the consideration of Congress, and useful information may be had from all quarters before our next session.

"Such valuable information respecting wear and tear of coin, occasioned by its circulation, is contained in the report of a committee of the senate of that body, that your committee consider it proper to insert an extract from the same in the appendix hereto."

An appendix, containing much valuable information, accompanies this report. Amongst the documents therein are the above letters of the Commissary General, of the 10th November, 1829, and of the 27th January, 1830; and to the former of these letters is subjoined some remarks upon the representation by the Commissary General respecting the **currency of Canada**, by the chairman of the committee; which, from its date, appear to have been written previous to the opening of the Legislature. These remarks will merit investigation, and are here given:—

"I entirely agree in the propriety of introducing a British circulating medium into every colony, and that an attempt should be made in this to overcome the difficulties which such a measure may seem to present; being persuaded that the advantages thereof would outweigh the apparent inconveniences. I, however, am of opinion, that the whole effect contemplated would not be produced in respect to relieving Canada from a dependence upon the United States for specie, and the exchange from being in certain cases ruled by the rates of that country.

"The proximity of Canada to those States must continue to render it indispensable for the commercial body to procure specie from thence, when necessary: as the distance from Great Britain renders a supply from thence by individuals quite impracticable, it being impossible to foresee the necessity in time to admit thereof—whereas intercourse with the said States is always accessible upon the spur of the occasion, and the risque and expense of conveyance little.

"Supplies of specie from the States are had by the banks or individuals, through the medium of bills of exchange upon Great Britain; and the rate of exchange thereon will necessarily be governed in such cases by the rate in the States. In

no country can exchange be legislatively regulated. It depends upon unforeseen and contingent circumstances, perpetually varying. It is a commodity which must regulate itself according to the demand and supply, and, like other commodities, can have no fixed value attached thereto.

"If government introduced a quantity of British silver coin sufficient for the circulating medium of the country, and always kept up that quantity, it would in a certain degree give them the command of the exchange, if they always drew bills; but still their rate and that of individuals would necessarily differ according to circumstances, as the latter, to procure a vent for their bills, would have to dispose of them at a lower rate.

"Individuals must draw for much of their shipments to the United Kingdom, and bills would still be sent to the United States for sale, when such a course should be found advantageous or necessary.

"French half crowns and the lower denomination of French silver coins, and Spanish quarters and eighths of dollars, and particularly pistareens, are greatly deteriorated, and their current value should be reduced. But I consider it impracticable and inexpedient to confine the circulation to *British coin only*. That should be made the legal tender, but it should be left optional to take foreign coins in payment, under some rule indicative of its not being compulsive, but at the same time to compel a capricious exercise of that option.

"Bank of England notes were never under legal tender, but at one time, their tender in payment, if refused, was made to stop interest to the extent of such tender. Something of that kind may be advisable, respecting payments here, when offered in foreign coins, if refused.

"Few Bank notes circulate in Lower Canada beyond the towns, and British silver is hardly ever seen in private hands. The issue of small notes, cannot, therefore, produce the effect stated in the representation. The paper circulation in Lower Canada is essentially different from that in Great Britain. It never did or will supersede specie circulation here, as when a Habitant from the country gets Bank notes, he generally goes with them to the Bank and gets silver in Exchange. That he possibly hoards, but as circulation should be encouraged, not impeded, there need be no scruple about calling in worn and defaced coins in order to the adoption of a measure for preventing an influx thereof from other countries. The loss attendant thereon ought in justice to be borne by the public, and when called in, those coins could be melted down and sold as Bullion or reissued at their real value.



" There has been no instance of the Banks in this province refusing to pay their notes in specie. Such would occasion an immediate stoppage of their business, and is not to be assumed as possible to happen ; for such is the repugnance of the bulk of the population of Lower Canada to paper, that the Banks never venture to issue more notes than they have a certainty of redeeming in specie. This is the reason why Banking in Lower-Canada is not so profitable as in other countries, and why superabundant issues of paper cannot be risked or made.

" It may be matter for consideration when the present Charters of the Bank expire, whether, on the renewal or extension thereof, it would be advisable to prohibit the issue of small notes ; but I greatly doubt of its propriety.

" The question of policy presents itself as worthy of favourable consideration, whether the introduction of British money of account and the circulation of national coin, besides other beneficial effects, would not tend to assimilate the general parts of the Empire.

" I have made various calculations of the intrinsic value of the several coins reduced to the standard of 4s. and 4d. Sterling per dollar, and have put the whole into the shape of an act of the Provincial Legislature, which was a work of some labour, and is open to consideration, and to verification of the calculations ; a copy thereof accompanies the Bill.

" The principle I have gone upon in introducing the new money of account and circulating medium, is, that the same number of dollars or the equivalent thereof, should be payable as before, for any specific amount of debt, so that vested interests and existing contracts will not be injured or altered.

Montreal, 2d November, 1829."

Questions prepared with much care and implying an intimate knowledge of the subject under inquiry, both in its leading principles and in its minute details were submitted, as well to the Commissary General as to the other Gentlemen mentioned in the above Report. The information obtained from these gentlemen is important ; and I shall freely avail myself of it in further prosecution of the subject.

The proceedings of the Legislature in 1830 upon the subject terminated in the passing of the bill already adverted to. the heads whereof are as follow :



The first clause after declaring that it is expedient to establish and ascertain by law the rates at which certain coins shall hereafter pass current in this province, and to prohibit the circulation of certain notes and other negotiable securities, enacts, that from and after the passing of this act, the silver coins commonly known by the name of pistareens, shall pass current at the rate of ten pence currency each, and no more, and the silver coins commonly known by the name of half pistareens or sixpences, shall pass current at the rate of five pence currency and no more.

The 2d clause enacts that after the expiration of three months from and after the passing of this act, no bank note or other note whatsoever made payable to "bearer," nor any note under the nominal value of five dollars, issued by any bank or joint stock company, or persons trading as bankers, save and except only such bank notes as may be issued by any bank incorporated by law in this province, shall be offered or given in payment on pain of forfeiting the nominal amount of such note, which amount shall be recovered on information and conviction in any court of competent jurisdiction in this province.

On the 23d Feb., 1831, his Excellency was pleased to send a message to the House of Assembly to the following effect :

"AYLMER, GOVERNOR IN CHIEF.

"With reference to the answer of the Governor in Chief to the address of the House of Assembly of the 5th instant, regarding the currency, his Excellency now informs the House of Assembly that Mr. Commissary General Routh has returned to Quebec.

A."

Neither the Legislative Council or the Assembly seem to have further occupied themselves with the matter. Having thus brought together the leading principles had by the Legislature upon the subject, I shall proceed in the next number to examine the nature and effect of the above mentioned law relative to the currency passed in 1830, and state some considerations which induce me to think that the time of the Legislature would have been advantageously employed in its last session in regulating the currency, and shall enquire into the principles upon which it ought to be regulated.

## NO. XI.

## CURRENCY.

CHARACTER PÉCUNIE EST EX JURE GENTIUM.

*Molin. Tract. cont. Usur. de Mat. Monet. Quæst.*

## THE SUBJECT RESUMED.

In the whole of the internal policy of a state, there is no one subject which calls for more vigilant and unremitting attention on the part of the first Executive Magistrate and the Council of State, than the matter of coin and currency. It is an imperious duty upon them to devise such measures as may secure its purity, and render it an exact standard of value in the mutual transactions of the members of the community, and in the liquidation of dues to the state.

The Executive Council of Lower Canada being, by the Colonial Constitution, the Council of State of the province, this matter ought regularly to have been first referred to them; and there might have advantageously been submitted to them, for their consideration, any communication upon the subject, received by the Captain General and Commander in Chief, from the officer at the head of the military money department, who, as is well known, is the Commissary General of British North America. That officer was called upon, by his duty, to consider the subject, solely in relation to the interests and wants of his department. The Executive Council, as a Council of State, were bound to embrace and look at it, in

connection with the particular interests of the province, so far as its trade and public impositions were concerned, and the relation which the province bears to its parent state. It is, therefore, perhaps to be lamented, that instead of making this measure a purely military one, so as even to be influenced by the occasional absence of the gentleman at the head of the military money department, it had not been regularly brought under the consideration of his Majesty's Executive Council for the Province, who are, as high civil officers of the Government, responsible to the civil authorities for the due exercise of the civil powers confided to them. Besides that proper regard which such a course of proceeding would have shewn to these high depositaries of civil state authority, and which belongs to them of right, we should have been entitled to expect a mature plan to be subjected to the useful ordeal of a scrutinizing examination of it in the several branches of the Legislature.

According to the course which has been pursued, this subject of infinite difficulty, nicety and complexity, has been thrown afloat without chart or compass upon two deliberative bodies, to be guided by whomsoever should choose to volunteer to take the helm, and without any one public officer or public body being responsible for the measures proposed. Thus making those separate bodies or casual individuals in them, to perform the functions of a Council of State, and depriving the public of the benefit which it ought to have had, of having the subject in the first instance examined by one responsible public body, and the result of the labours of that public body, checked and revised by the two several branches of the Legislature. From the unfortunate course thus pursued it was hardly to be expected that any beneficial effects could follow, still no one could have foreseen the extent of the errors to which it gave birth.

There are some general principles which now assume the rank of axioms in that branch of the political economy which

relates to the coin and the currency, and which were either unknown or entirely overlooked by the gentlemen composing the Committee of the Assembly of 1830.

All admit that money can, under no circumstances, be made to circulate beyond its intrinsic value. Where the nominal value is increased beyond the intrinsic value, a corresponding increase takes place in the prices of all commodities, and amongst these of Bills of Exchange. On the other hand, where the nominal rate is less than the real rate of value, there also a corresponding change takes place in the price of commodities, and amongst these of Bills of Exchange also. It is further to be observed, that if there be two or more coins forming a part of the legal currency of the country, and the nominal value of the one be higher than the nominal value of the other, the latter will be displaced by the former, and entirely disappear, or be obtainable only by the payment of a premium.

These principles admitted, it is manifest that the holders of any given coins are not affected by any change in the currency, although the relation of creditor and debtor may be affected by the augmentation or diminution of the nominal rates of the coin, the holders of them with the solitary exception of the Fisc, are not affected thereby:—The Legislature assuming that the intrinsic value of the Pistareen was 10d. whilst its nominal value was 12d. took away not one iota of the intrinsic value of that piece. If eggs had been selling at 12d. previous to the passing of the law, they would *ceteris paribus* have sold for 10d. after its passing, but they would in both instances have been paid by the same identical quantity of silver or other precious metal, and it might have been of the same identical form. So also supposing no other circumstance to influence the rate of wages, or the rate of rent, or the price of commodities, the same quantity of labour, the same use of land and the same quantity of commodities could have been obtained for any given number of these pieces of silver called Pistareens, before as after the passing of this

law. In point of fact the holders of these Pistareens had given no more labour for them than was equal in value to the quantity of silver which they contained; in other words, no more labour than was equal to their intrinsic value. Now by the bill, as reported by the committee, all the pistareens in the country were to be called in and paid for out of the public chest, allowing 12d. for each of them, the whole to be thus paid for in coins whose nominal value did not exceed their intrinsic value. By this process there would have been given to each holder of a pistareen 12d. for that for which he had only given 10d. and the public chest would thus have been charged with the loss of 2d. upon each pistareen held by him, and a *bonus* to that amount would have been given to the holders of pistareens, without any consideration whatsoever. But the evil did not stop here—no machinery was attempted to be provided, perhaps none could successfully have been framed to prevent pistareens from coming in from abroad after the passing of the law. It is marvellous that gentlemen of the experience and knowledge of those who composed that committee did not see that the effect of paying out of the public chest 12d. for an article which was worth only 10d., was to make of that chest a reservoir of all the pistareens, not only in this and the adjoining British provinces, but also of the whole of this North American continent, nay, of the whole world, whence pistareens could be imported, and leave a profit on the 2d. after paying the expenses of transport and insurance.

It has been seen that the diminution of the nominal value of the pistareen, to which we shall confine our attention at present, for the purpose of simplifying the subject, did not, as was erroneously supposed by the committee, affect the holders of pistareens. It did affect, however, a large class of persons in a manner whereof the committee appear to have been wholly unconscious; and this brings us to the second branch of the subject, which involves the consideration of the effect of any change in the denomination of coins upon the two

classes of persons, which comprise the whole, or nearly the whole, of human society—and these are debtors and creditors.

Any change in the denomination of coin materially affects all pre-existing engagements:—If the nominal value be augmented, the creditors—if it be diminished, the debtors, are prejudiced. Having received upon law 100 pistareens, which would be denominated £5, and being called upon to pay the law £5 after the passing of it, I should be constrained to give one-sixth more than I received for them, besides the interest. Any law which disturbs the relation of debtor and creditor, is fundamentally unjust. The converse of this process, which is the augmentation of the nominal value beyond the real value, has the same disturbing effect, but is not exactly the same as to its consequences, because it bears upon the rich, who suffer less from the injustice, whilst a provision like the present one comes with overwhelming weight upon the poor.

Fortunately for England, her institutions have secured her from the frequent, sudden and injudicious transitions in her currency, to which the continental states of Europe were, till within a comparatively modern period liable, and of which the law of this province of 1830 affords the only example in any portion of the civilized world for more than a century past. The effect of these sudden transitions has, therefore, not attracted the same attention in England at any time, nor upon the European continent, in latter days, that was given to it by the European writers of the sixteenth and seventeenth centuries; and it is to these writers that we must refer, if we wish to understand the multiplied injustice which a process of this kind is calculated to inflict upon the people, and the utter impossibility of regulating the just rights of debtors and creditors, where the state itself is guilty of the crime of rendering the standard of value fluctuating and uncertain.

The first of the feudist lawyers and second amongst the civilians, to Cujas only, was Dumoulin, who rendered in his day the same service to his country and to the cause of truth and justice, in relation to money, which Locke long afterwards did to England. None of the economists of his day



understood better than he did, the necessity of making the intrinsic value of money its sole standard, and no one could express more energetically or fearlessly the crime of taking any other.\* So sensible was he of the importance of this truth, that after inculcating it in the Latin work from which the epigraph of this paper is taken, he condescended (and at that day it was an act of great condescension) to give the outline of his work in his own vernacular tongue, and dedicated it at its close to his countrymen in the following remarkable and affecting address :—

"L'auteur au peuple de France.—Vous avez en votre langue ce gage et temoignage du zele que j'ay pour la verité, pour la justice, et pour le bien public : et du labeur que j'ay pris et continue longtems à mes depens sans l'apport ny faveur d'aucun grand ou petit, laissant les moyens (que j'avois en main) par lesquels l'on va aux richesses et honneurs de ce siecle."

I cannot forbear, though it may perhaps be deemed a digression, to advert to a remarkable passage in this work, strikingly illustrative of the effects of trifling with coin ; it appears from it that our Edwards and Henrys, our Talbots and Bedfords, lost all the fruits of the victories of Cressy, Poitiers and Agincourt, by this offence :—

"Je n'ay point leu de telles plus grandes illusions que celles qui avindrent les Anglois estans en ce Royaume de France, tenans cette ville de Paris ; car lorsque furtivement, par le moyen des Bourguignons, ils y entrèrent l'an mil quatre cens dix huit, le marc d'argent ne valoit que neuf livres tournois, tant la monnoye estoit forte.—Mais des lors fut la monnoye que l'on forgea cependant à Bourges, tellement et si precipitamment deteriorée, qu'en moins de quatre ans que fut l'an mil quatre cens vingt deux, le marc d'argent valut quatre vingt livres tournois, qui est la plus précipitée et la plus prodigieuse depravation qui fut ongues ; car combien qu'environ cent dix huit ans auparavant, Philippe le Bel l'ait grandement deteriorée, dont les auteurs et historiens exclament fort, toutefois il ne l'empira que des deux parts ; mais cette cy fut de plus

\* See Appendix, No. 2, page 3.

de huit fois, et aussi calamité et misère du Royaume estoit trop plus grande sans comparaison, que du temps du dit Philippe.

"Je trouve aussi par plusieurs édits du dit tems des Anglois écrits au livre noir estant en la Chambre du Procureur du Roy au Chattelet de Paris, que les dits Anglois, par édit qu'ils publièrent au nom du Roy Charles Sixieme, qu'ils tenoient quasi prisonnier en leurs mains, hebeté, et en leur puissance, mirent au mois de Juin, l'an 1420, l'escu à soixante sols tournois, le mouton d'or à quarante sols tournois et les nobles d'Angleterre à sept livres tournois. Et l'année ensuivante 1421, après que cependant ils avoient employé, les dites monnoyes à tel haut prix qu'il leur auroit plu, les ravalerent, pour les reprendre à plus vil prix, tellement que le gros tournois qui valoit l'an mil quatre cent vingt, seize deniers tournois, fut l'an ensuivant à quatre deniers tournois qui estoit au quart et le dit escu à trente sols tournois, et le dit mouton d'or à vingt sols tournois, qui estoit la moitié moins : Ce qui fut cause qu'ils encoururent, la haine et meprisement du peuple, au moyen de quoi petit à petit ils furent facilement et en bref tems du tout dechassez : ce qui ne leur fust ainsi et si tost avvenu, s'ils eussent bien policé, et s'ils se fussent fait aimer du peuple."

The throne, then, of our Edwards and our Henrys in ~~fair~~ France was undermined by injustice eating into the sword of Talbot, and rendering vain the wisdom of Bedford. So true is it, by an eternal law of nature, that the abuse of power shall destroy it. The fact is not noticed, as far as I recollect, by our historians ; but the authority of this great lawyer is not to be controverted.

To return from this digression, Dumoulin establishes that the intrinsic value of coin in the time when the contract was made, is to be looked to, and that any variations in the denomination, though made by public authorities subsequent thereto, ought not to affect the rights and obligations of the parties. The law of 1830, containing no provision upon this head, the obligations of debtors came to be unjustly enhanced. And it is to be observed, in aggravation of this injustice, that, so far as the particular coin of pistareens is concerned, this relation was unnecessarily disturbed by this law,

and I may add too improperly, for the nominal value of it was fixed at a rate below its real value, the consequence of which has been the entire disappearance of pistareens in Lower Canada.

To make up for the error committed by the Legislature in fixing the value of the pistareen at a lower nominal rate than its intrinsic value, the French half crown and the American half dollar were rated at a higher value than their intrinsic value. The French half crown being rated at 2s. 9d., and the American half dollar being rated at so high a nominal value as to have nearly driven out of the market every other coin. It is well known that a fortnight had hardly elapsed after the passing of this act before four or five thousand pounds in half crowns were paid in one sum by a mercantile house in Upper Canada to the Bank of Montreal, and since that time Lower Canada has been absorbing this debased currency. This act being confined to pistareens and half pistareens, and leaving the other coin without any adequate provision, the consequence has been that the pistareens, crowns and half pistareens have disappeared from the market, and the most debased coin under the provisions of the old act have supplied their place, excluding all the coin which, under the provisions of the old act, were rated at their intrinsic value, or even near their intrinsic value. It was to have been expected in the Report of the Committee of 1830, that materials would have been furnished to the House and the Country to enable them to ascertain the grounds upon which the respective values stated in the Bill recommended by that Committee, had been adopted by them. Upon this branch of the subject the Committee observe an extraordinary silence. In this particular perhaps they have not been wanting in discretion, for I apprehend that no one moderately conversant with this subject can agree in the values stated by them in the Bill; for my own part, being utterly at a loss to conjecture the grounds upon which those values are stated, I must abstain from entering into the consideration of them.

The only remaining subject of enquiry offered by the bill of 1830, is the proposed establishment of a monetary par of £115 and 5-13ths of a pound for the £100 sterling, instead of the existing par of £111 2 2½ to the £100 sterling. The lamentable ignorance exhibited by the committee in the elementary matter of this enquiry, may well dispense with the examination of a measure like this, requiring not only a full knowledge of the subject in its general bearings, but also a more minute knowledge of it in its details, than they have exhibited.

The only peculiar feature of the report of the committee of the Legislative Council, is the view which it takes of the establishment of sterling money as the money of account of the Province. The answer of the President of the Committee of Trade of Quebec seems to me to embrace all that is necessary to say upon this subject.

We have thus embraced the leading considerations respecting the coin and currency of the province, so far as the transactions between private individuals are concerned. It remained for the committee of the House to consider it in relation to fiscal regulations.

By the change made under the authority of the Lords of the Treasury in the nominal denomination of the Spanish dollar, wherein the crown duties are paid, an augmentation was made in 1825 of more than 8 per cent of the whole amount. This important branch of the subject is entirely neglected by the committee of the Assembly. It evidently had not escaped the attention of the committee of the Legislative Council, as appears by the examination of the Collector and Comptroller of the Customs at Quebec.\*

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\* Questions put to the Collector and Comptroller, and their answers thereto:—

1.—What was the rate at which dollars were received in payment of crown duties previous to the year 1825?

At 5s. 6d. per ounce, or 4s. 9½d. per dollar.

2.—At what rate are they now received?

At 5s. 3d. per dollar.

Whether the proceedings of the Committee of Grievances, as contained in their first report, which we have attempted some few numbers back to analyse, form any portion of those labours of the House which have called forth the expression of his Excellency's admiration, I have few and slender means of judging; but I think that I may venture to say, that if what was done by the House in the last session relative to the currency excited this emotion in the heart of the nobleman at the head of the government, it must have been that kind of admiration said to have been expressed by a witty Frenchman, to one of our own countrymen—*Vraiment j'admire le talent qu'ont vos compatriotes pour le silence.*

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3.—What has been the cause of that alteration?

An order from the Honourable Commissioners of his Majesty's Customs, dated 20th December, 1827, founded on an order of the Lords Commissioners of his Majesty's Treasury, dated 27th November, 1827.

4.—Are you aware that there has been any alteration in the law since 1825?

We are not aware of any alteration in the law since 1825.

5.—Have you any records which can afford evidence as to the manner in which these duties were received for the first 22 years after the passing of the act in 1774, imposing the same?

The records merely shew the amount of duties collected, without any reference to the manner in which they were received; but it would appear, from various correspondence, had relating to the duties in question, that they were received at the rate of 4s. 6d. sterling per dollar.

6.—At what rate is it now the custom to receive British silver in payment of duties?

British silver has not yet been tendered in payment of duties; but it is receivable here at the same rate as in Great Britain, being 20s. to the pound sterling.

## NO. XII.

FUNCTIONS AND DUTIES OF THE GOVERNOR  
OF A BRITISH PROVINCE.

In provincia vero ipse, si quem es notus, qui in tuam familiaritatem penitus intravit, qui nobis ante fuerat ignotus; huic quantum credendum sit vide; non quia possint multi esse Provinciales viri boni - sed hoc sperare licet; judicare periculosum est. Multis enim simulationum involucris tegitur, et quasi velis quibusdam obtenditur unuscujusque natura, *frontis, oculi, cultus percipiuntur*, *oratio vero sapientissima*. Quamobrem, qui potes reperire ex eo genere hominum, qui pecunie cupiditate adducti careant his rebus omnibus, a quibus nos divulsi esse non possumus? te autem, alienum hominem ament ex animo, ac non sui commodi causa simulent? mihi quidem permagnum videtur; præsertim si iidem homines privatum non fere quemquam, **PRÆTORIS SEMPER OMNES AMANT.**

CIC. AD QUINT. FRAT.\*

THE internal government of the British colonies resembles, in some respects, that of metropolitan states. The form of government in theory differs essentially from what it is in practice; the Governor of a British colony may be either looked at as a constituent branch of the Legislature, or as the first administrative officer. When I come to the examination of the Legislative Council, as at present composed, and of the new policy which they have thought proper to pursue for the last three years, it will be requisite to enter somewhat fully into the consideration of the powers and functions of the Governor as a constituent branch of the Provincial Legislature.

In the present paper I shall consider him solely as the administrative head of the Provincial Government.

\* This letter of Cicero is considered an admirable illustration of the subject in hand, by a great statesman; and large extracts from it have been translated, and placed in the Appendix, No. 5, page



It is hardly possible to obtain a correct view of any of the main branches of colonial administration, without having under one's eye the political history of the old British colonies, which, a close examination will convince us, is intimately connected with the existing order of public things in the present British colonies. I must beg, therefore, to be permitted, before entering into the details of the subject at the head of this paper, to cast a glance over some leading political events in the old colonies.

The conquest of this country by the British arms changed all the previous political relations of North America; and it is not too much to say that the victory of Wolfe was the first act in the great drama which ended in the recognition of American independence. France no longer skirted the North American colonies with a warlike population, and the powerful Indian tribes of this continent over which she possessed unlimited controul; and there thus ceasing to be any points of collision between these powers, she became the ally of America. Great Britain was substituted in the place of France. So true was this, that with the Canadas the French influence over the Indian Tribes was transferred to Great Britain.

The political agitations of the British Colonies were no longer kept within bounds by the fear of a powerful external enemy; and the result was the declaration of independence in 1774. The Canadas, it was expected by the American leaders, would eagerly embrace the opportunity of shaking off the yoke so recently imposed on them by Great Britain, and join the standard of revolt. The result of the invasion of Montgomery evinced their error.

The men who acted in this civil war were divided into several classes, the characters and feelings of which it is material justly to appreciate; as one of these classes was destined materially to influence the fates of the remaining British colonies, and in a peculiar degree those of Lower Canada.

Though a diversity of opinion was existing in respect of the men who rallied round the standard of what was then deno-

nated rebellion, and is now called revolution, we are compelled to admit that many of them must have been actuated by motives of patriotism, some by those of ambition; but all manifested, in resisting with their slender means one of the most powerful nations on earth, a degree of courage to which it is impossible to refuse the tribute of our admiration.

The opposite ranks were filled principally by men who, from their occupations, habits of life and of thinking, were averse to civil strife and broils, and could not reconcile their consciences to resist the authority of their sovereign: a more loyal, honest and respectable class of men no country ever boasted of.

The remaining part of the loyalists consisted of the placemen of the different colonies. They, their descendants and their friends, have been found since the year 1774, and are now found in all the principal offices of his Majesty's colonies. In the struggle which followed, these men were not found in the field; their loyalty vented itself in extravagant professions, in addresses and in representations to the colonial administration and the British government. The war depriving them of their places, they assailed the British government with petitions for new ones. In this race one class far outstripped their companions. This was the placemen of New England. As a luxuriant soil pushes forth the most poisonous weeds and the most abundant harvest, as food for man, so did this portion of the British Colonies furnish from her own bosom some of the best of her friends of the country, and some of the most inveterate and designing of her enemies. Nurtured in the very focus of the revolution, and marked with a deep and indelible tinge of the hypocrisy, the astuteness, the design of their puritan ancestors of the days of Cromwell, no supplication was too mean for them to resort to, no means too crooked if leading to the attainment of their ends, and each successive refusal was followed by a new and better contrived series of intrigues, and by more humiliating and abject supplication.

Exertion so meritorious could not but be successful ; and these men were scattered over all the British colonies, and monopolized all the offices and emoluments of power.

It will be seen, in the further progress of these papers, that an independent course of conduct is required on the part of the Executive Council, and on the part of the principal public functionaries, whose duty it is to check and controul the Governor in the discharge of his public duties, which these men would not be very likely to do, and have not done.

I proceed :—By the Colonial Constitution, as it stands upon paper, the Executive Council is not only a council of advice, but a council of controul. The Governor cannot grant one acre of ground without their consent. In all matters of public policy within the colony, it is his bounden duty to take their advice ; he is not, it is true, absolutely bound to follow it when given—but when he does so, he is relieved from all responsibility ; and, on the other hand, when he acts without or against their advice, he acts *suo periculo* :—Besides the Governor, who is a moveable officer, there are several fixed officers of the colonial government—by whose means, in conjunction with the Executive Council, it seems to have been expected, that that steadiness and uniformity of action, without which no government can long stand, would be obtained. These are—The Lieutenant Governor of the Province, who is understood at the same time to be chairman of the Executive Council ; the Chief Justice of the Province, performing functions somewhat analogous, if I may be allowed to compare small things to great, with the duties and functions of the Lord Chancellor of England. There is, further—the Secretary of the Province, who was destined to occupy a position in the colonial government, somewhat analogous to that of the Secretary of State in England. To these are to be added—the Law Officers of the Crown, by whose advice, in all law matters, the Governor is absolutely bound ; the Surveyor General, a highly important officer ; the judiciary, and its officers. All these are permanent powers residing within the Colony,

and which, the framers of the general instructions thought, would be abundantly sufficient to prevent the Executive Government from degenerating into a government of will, or a pure autocracy, which it now is. It will not be uninteresting to look into the causes which have led to this event. All the offices under the Government being during pleasure, and the British Government, naturally looking to their Governors here, for the selection of fit persons to fill the Councils, they very naturally chose, that the officers of Government who environed them, and of whose flexibility of will and of purpose they were duly sensible, should compose them. The Executive Council has accordingly been progressively falling into public discredit. For a long time the Governors consulted them as they were bound to do, but of late years this decent ceremony is often omitted; thus, for instance, there is reason to believe that, from the time of the accession of the Earl of Dalhousie, the Governors have not condescended to submit to the Council any of their speeches at the opening or the close of the Sessions of the Provincial Parliament, nor are they consulted upon the general course of public policy within the Colony.

The Council cannot afford to resent this neglect, because they are all of them placemen, and the Governor is taught to consider himself as the sole spring of all executive power within the Colony. Another circumstance also, which prevents a proper control of the Governor in other public matters, is his sole and exclusive patronage of all offices of honour and emolument. Many of the high public functionaries must and do have families and others dependent upon them. The love of office is one of the maladies of this continent, and the men in office are naturally desirous of getting as many of their own family into office as they can. In this position of things, to expect that each public functionary should discharge his duty without an eye to the pleasure or the displeasure of the Governor, for the time being, is to expect more public virtue than we have yet been able to find in these hy-

perborean regions. Again, the Lieutenant Governor in point of practice, has always been a cypher, whether he opposed the Governor in Chief as General Hope did Lord Dorchester, or did nothing at all, as all General Hope's successors in office have done. The Lieutenant Governor thus withdrawn, his place in the Executive Council came to be occupied by the Chief Justice for the time being. I need not say, that by these means, this last mentioned public officer, came to be too intimately mixed up with the local politics of the Province, and there then came into his hands, a concentration of power not merely adverse to, but subversive of, all public freedom.

The manner in which the patronage of the Governor has been exercised has been highly injurious to the government. The power of the Governor ought to be controlled in some shape or other in the exercise of this patronage. It is not here as it is in England, where a ministry comes in and goes out; and the mischiefs of this colonial abuse are, therefore, perpetuated from governor to governor. The new governor is obliged to use the instruments which his predecessor has left him, and these, sometimes bad enough, selected perhaps by a governor, who with the best intentions in the world, has converted his patronage into an eleemosynary fund for decayed widows, and for men whose only claim to be provided for, is, that they cannot provide for themselves.

Another circumstance which has very materially affected the complexion of the colonial administration, is, that our governors ever since Sir Robert Shore Milne's administration, have been military men. No man entertains a higher respect for military men than I do; but who is there so stupid as not to know that military men, generally speaking, are altogether unequal to the discharge of civil duties of any kind, still less of duties of so delicate and important a character as those of Governor in Chief of British North America. Lord Brougham and Lord Tenterden are confessedly men of high talents; but what would be said if the command of the channel fleet were

given to one of these noblemen, and the other were requested to supply the place of Lord Hill as Commander in Chief of the Forces, or generalissimo of an Indian army to chastise the gold footed Emperor? Is there any difference between this and the appointment of a man who has passed the whole of his life in the camp, to civil command?

The autocratic tendency has been from this cause much augmented; and at this moment the government of Lower Canada may be defined to be a mixed government composed of the two discordant elements of autocracy and democracy.

I cannot close this paper without making some observations upon an expression which provincial baseness has brought into general use, and which is calculated to convey very erroneous notions of the powers of governors to themselves and to others. We every day hear the governor called *the King's Representative*. Nothing is more inaccurate than this expression in the sense in which it is used.—Constitutionally, the King is the fountain of all office, honour and power; and each officer of the government deriving his authority from the king, represents the king in the exercise of his legal power. This is true as well of the highest as of the lowest officers—it is as true of a constable as it is of the Lord Chancellor of England. In no other sense can it be rightly applied to the Governor of a Colony. None of the particular attributes of sovereignty, under the constitutional law of England, are applicable to that officer. The King can do no wrong. Is that true of a provincial Governor? His powers are originally inherent and perpetual—that of a Governor is derivative, temporary and dependent upon the will of him who conferred it. Constitutionally, the King is answerable to God only for his acts. The Governor is answerable to his Royal Master. The King is amenable to no human tribunal for the discretion which he exercises in displacing public officers. The Governor is answerable in the King's Courts at Westminster for the



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suspension or removal of any subject of the King holding an office of emolument within the Colony.\*

That an expression such as this should have obtained currency, is of itself pregnant evidence of the servility of that class of the colonial society where it has long been and still continues to be in daily use.

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\* *Masters Canadian Freeholder*—Appendix No. 3, page 4.

## NO. XIII.

ON THE THIRD REPORT OF THE COMMITTEE OF  
GRIEVANCES.

Ego pugnas maximas omni meâ comitate sum complexus, Nymphonem etiam  
Colophonium. CIC. AD QUINT. FRAT.

IN all civilized countries the legislative and judicial powers, however variously regulated, are kept distinct and apart. For wrongs done to the person or the property of the subject, recourse must be had to the judicial authority, from which the proper remedy is to be obtained in the Civil Courts, and sometimes punishment in the Criminal Courts. In this manner the parties have the benefit of being able to refer to known established rules, whereby their rights are measured, and the forms of the proceedings for their preservation established; so, likewise, as a further protection for the subject and for maintaining unvaried the common standard or rule by which all his rights are to be measured, the constitution of Courts themselves carefully provided for, and a regular judicial hierarchy established to correct any of the errors to which human infirmity may give occasion, in the judgements of the Courts of original jurisdiction, which errors might otherwise affect the sincerity and integrity of the standard rule, and contaminate the body of the law.

In the report to which I am now to solicit attention, the committee has erected itself into a court of justice, and has

determined various questions actually pending in the Courts of the province, and in progress of trial and adjudication therein. It is quite true that the conclusions or judgments of the gentlemen composing the committee, are altogether nugatory, whether they be right or, whether they be wrong. It is equally true, that these conclusions or judgments are of the most hasty and incorrect character, as I shall soon have an opportunity of shewing; but we are not thence to infer that these proceedings of the Committee are harmless; any interference by any body of men with the judicial power, an assumption of the slightest portion of that power by men not vested with it, is dangerous to true freedom; so too, the character of more than one individual not before the Committee is implicated by this report. Although there may be extraordinary circumstances in which such a power may be exercised, in which, in the progress of inquiry, such an effect may be produced without affording grounds of legitimate complaint, yet this is by no means a matter of course, as the Committee would seem to have thought it. "Reputation, indeed, is not only one of our perfect rights, but that which alone gives a value to all our other rights; the integrity of our honour and character, being one of the chief instruments of temporal prosperity and success."

Before proceeding to the examination of the report, I will give it in the words of the Committee itself.

"Being required to examine into the divers allegations contained in the petition which has occasioned the present reference, your Committee have, in the first place, endeavoured to ascertain the rights which the petitioner is entitled to claim, as lessee under the Crown, of that part of the country known by the name of 'the King's Posts.' They have found those rights clearly defined in the original lease granted in 1822, in favour of the late John Goudie, who in 1823 transferred two thirds of his right therein, to Mr. James McDouall.  
(a) In the month of October of the following year, the lat-

\* Holt on Libel

(a.) It is surprising that the committee did not perceive at this the threshold of their inquiry, that to enquire into the rights of individuals,

ter transferred his claims and rights therein to William Lamson, Esquire; and on the 21st of November, in the year 1827, the remainder was transferred to him. Those deeds, and the topographical plans and maps relative thereto, which your committee have examined, as well as the opinions of the crown officers to whom the question was referred in 1823, shew that the 'King's Posts' comprehend a large extent of territory, reaching from the Black River, which falls into the River St. Lawrence, on the north side, unto Cape Cormorant, which appears to include no less than 95 leagues in front and in the depth the whole tract which may be found to exist between the St. Lawrence and the height of land which separates Lower Canada from the Hudson's Bay Territory. All this country is entirely wild, and presents no other settlements than those which the different Lessees of the King's Posts have made for the prosecution and security of their trade with the Indians.

"In order not to injure the trade carried on by the Lessees, Government have never abstracted from the said territory any part of it, unless it be the seignior of Mille Vaches, which his most Christian Majesty granted in 1658 for the purposes of cultivation, and to establish it as a seignior, but not for the purpose in any way of interfering with the Indian trade; at least, such must be the conclusion drawn from the concession deed of that seignior, which does not contain a word about any trade with the Indians, whilst the lease of the Posts gives and secures to the Lessee the right of trading with them to its utmost extent. This grant has three leagues in front by four in depth; and as no navigable river passes through it by which to penetrate into the interior of the country, it is clear that the grant was not made for the purpose of the trade in Peltries, which are not to be met with but at a great distance from the main river, but for the sole purpose of forming there a permanent establishment by cultivating the soil.

"Notwithstanding these circumstances, it has nevertheless been proved before your committee that the Hudson's Bay Company, (b) who have hired, and for a long time occupied

where those rights were alleged to be violated, and conflicting claims as to property set up, and the finding what those rights were, consequent upon such inquiry, formed a part of the judicial function, preliminary to an adjudication upon the rights in question, either dismissing the claim of the party prosecuting or maintaining it, and then granting the remedy which the law provided for the particular case.

(6.) It does not seem to have occurred to the committee that the Hudson's Bay Company were not before them, that these proceedings were had

the said seigniory, far from forming any agricultural settlements there, have, on the contrary, established there a new place of trade, in contradiction to the condition of the concession deed of the said seigniory, (c) and to the great injury of the government lessee, whose profits have been thereby greatly reduced, and who, if these encroachments are allowed to be long continued, may ere long be rendered unable to pay the rent stipulated in his lease. Fully convinced of the injury which this trading establishment caused to his interest, the lessee early complained thereof to the Governor in Chief, Lord Dalhousie, who referred the matter to the consideration of the crown officers. (d) These gave it as their opinion that Portneuf constituted a part of the domain of his Majesty, leased out under the appellation of 'the King's Posts.' Previously to the expression of this opinion, the Governor in Chief, Lord Dalhousie, had issued a proclamation for the purpose of placing the lessee in full possession of all his vested rights, and of preventing every one whomsoever from disturbing him in the possession and enjoyment thereof.

"It has not appeared to your committee that the aforesaid proclamation has had the effect desired of putting a stop to the encroachments of the *Hudson's Bay Company*; and Mr. William Lampson, who has succeeded to the rights of the original lessee, has been exposed to the same evils; his clerks and his servants have been assaulted, have been driven from their trading posts on the River Portneuf, and after witnessing the destruction of the huts they dwelt in, have at last themselves been arrested and carried prisoners to Quebec; after having thus got rid of the persons in charge of the concerns and the servants of Mr. Lampson, the said partners and servants of the *Hudson's Bay Company* did treat and intoxicate the Indians who had placed their furs *en cache*, and hav-

behind their backs, without any notice to them, either actual or constructive, without the witnesses whom the committee examined being sworn, without any observance of the forms prescribed by law for the investigation of and adjudication upon controverted rights of property.

(e.) The inaccuracy of this statement, though unimportant when compared with the more flagrant irregularities with which the report abounds, ought not to escape notice. The title deed to Mille Vaches contains no prohibition of trade with the Indians, as may be seen upon reference to the copy of that title deed contained in the appendix subjoined to this report.

(d.) These opinions will be subsequently inserted, and our readers will have an opportunity of judging of the weight that is due to them. If that were much greater than I can bring myself to think, who ever conceived that the opinion of an advocate, private or public, should be considered as the committee seem to have taken it, a *res judicata quæ pro veritate accipitur*.

ing thus debauched them, made them shew the place where the furs were deposited, and took them away in the month of June last. (c)

(f) "Without entering into the consideration of the legality or the validity of the said lease of the King's Posts, your committee cannot help believing that under such circumstances it became the duty of the Government of this Province to direct the Crown Officers to support the rights of its lessee (g) and this was what the lessee expected, when, to his great surprise and mortification, he learned that the chief of those officers, viz. James Stuart, Esquire, the Attorney General, had been retained, and acted as Counsel and Attorney in behalf of his adversaries—the agents and servants of the Hudson's Bay Company. Deceived in his expectation of being assisted by the said Crown Officer, (h) the lessee was compelled to apply

(e.) Who does not see that the proper, and, indeed, only mode of trying the truth of these facts, and, what is more, of affording an adequate remedy to Mr. Lampson, if they should be found to be true, was an action of trespass to be brought and tried according to the established forms of the law in the King's Courts for this Province.

(f.) Yet it would seem to have been necessary that the committee should have enquired into this branch of the subject, if they entertained any doubts respecting the legality of the monopoly, as this paragraph implies; for if there were no monopoly no injury was done to Mr. Lampson. The wrong doers were the Government and Mr. Lampson—the sufferers were the Hudson's Bay Company and the King's subjects generally, in having enforced against them an illegal monopoly to the prejudice of their free trade. This point is here merely adverted to for the purpose of shewing how little fitted the committee were for exercising a judicial authority which they had usurped.

(g.) The Committee are under a very strange error here: it is not the duty of the King's Government to interfere in the controversies between private parties. To the King all subjects are equal—he listens to their complaint for the violation of their civil rights in his courts, and no where else. It is not true that the King, as lessor of the King's Posts, was bound more than any other lessor to defend his lessee against trespassers; he defends the legal right and possession of the lessee; the actual use and enjoyment that lessee must take care of himself; and if he be disturbed in such use and enjoyment by mere strangers, as is alleged to have been the case here, his redress is to be sought in the King's Courts. The principle here laid down by the committee is laughably childish. The lessee of a house in Quebec or Montreal has his wood forcibly taken from his yard and his servants beaten in attempting to defend the possession of it, and he calls upon his landlord to prosecute the recovery of the wood; and satisfaction for the personal injury to his servants!—*Spectatum admissi ruium tenentis, amicti.*

(h.) Men are very often apt to be deceived in their expectations when they form unreasonable ones: if the legal possession of the King's Posts, or the title to them under the lease had been put into question, then Mr. Lampson would have been entitled to expect to be defended in that pos-



to another attorney, to institute an action *de revendication*, against the parties who had committed those illegal and forcible aggressions, by which he had been deprived of peltries to the value of nearly £2000 currency. It was the same in another action *de reintegrande*, (i) which the said Attorney General, for and in the name of the lessees of the seigniority of Mille Vaches, instituted against him, (the said William Lampson) to compel him to remove from the banks of the river Portneuf, as forming a part of the land conceded to them. On this occasion, the support given by the said James Stuart, Esquire, Attorney General, as aforesaid, and which he does still give to the said company, has appeared to your committee to be a direct and positive violation of his duty towards the Crown, the interests whereof he has culpably abandoned, either from an inordinate love of lucre, or from (what would be as bad) a strong desire to render service to his clients, even to the prejudice of the Crown, which is eminently interested in the success of its lessee, in his disputes with his adversaries (the partners and servants of the Hudson's Bay Company.) (k)

"The river Portneuf, which is the scene of the encroachments of which the said William Lampson complains, appears to constitute a rich and important part of the King's posts, not only as regards the fur trade, but also as regards the procurement of timber and the cultivation of the soil. The soil and the forest on the banks of the said river, and in its neighbourhood, being of an excellent description, it would,

session by the King, acting through his proper responsible officer, to wit, the Attorney General; but as to any squabbles between the servants of two rival Fur Companies, the crown neither could nor ought to interfere; and the law officers of the Crown are at perfect liberty to act for either the one or the other of the parties as they continually do in all parts of the Empire, as private advocates in the private controversies of private individuals.

(i.) Does it not appear here from the shewing of the Committee themselves, that the matter which they took upon themselves to investigate was in legal course of inquiry before the only competent tribunal, to wit, the Court of King's Bench, for the District of Quebec; and where did the Committee find any concurrent jurisdiction with that tribunal over the matters in controversy? and if there was no pretext for their having any such jurisdiction, how could they justify to themselves their proceedings thereupon?

(k.) The Committee down to this passage have exhibited only a lamentable want of knowledge of the subject submitted to their enquiry. This passage calls forth and justifies sentiments in relation to those gentlemen, of which the respect I owe to the body whose delegated powers they exercised interdict the expression. It is but justice, however, to that body to say that their concurrence in the Report in question was never asked, nor of course obtained.

therefore, be a sacrifice of the interests of this province, and of the government, to suffer the lands to be encroached on; and, in the humble opinion of your committee, the Attorney General could not lend his assistance, and the influence he possesses over the Courts of Justice, to the spoliation of the domains of his Majesty, without failing in his duty. (i) Yet, as it is seldom that one fault does not produce others, and often greater, this usual consequence has happened in this case, with respect to the Attorney General.

"Having once involved himself in the concerns of the adversaries of the crown, (m) he did not hesitate in persisting to defend his clients by all the means in his power; and in suits wherein a partner and two of the agents of the Hudson's Bay Company were sentenced to fines and to twenty-four hours imprisonment, for having repeatedly sold strong liquors to the Indians, and made them drunk—the said Attorney General constituted himself as their advocate, and exerted himself to procure them to be exempted from the payment of the fines imposed, although he well knew that the moiety of those fines would fall to the profit of government, and he paid into its chest. (n)

"The witnesses examined have proved that on this occasion the said Attorney General, in the course of pleading in behalf of those persons whom it was his duty to have prosecuted, so much forgot himself as to make use of expressions which were indecorous, and even offensive towards those magistrates who had pronounced those sentences. (o)

(l.) The Committee here determine a question of real property, *per saltum*, without any inquiry into or any information respecting the location or the Title of Mills Vaches, or into or respecting the possession of the actual proprietors of that seignory. It is probable that if they had done so they would have found that the location of the seignory of Mills Vaches as embracing the river of Portneuf, was made more than 100 years ago, and had been followed by a continued and uninterrupted possession thereof down to this hour.

(m.) They were the rivals and adversaries of Mr. Lampson with whom it has been already observed the Crown could have nothing to do and with whose private quarrels it could not interfere.

(n.) How sordid this idea! two or three individuals are fined £5 each, for having sold liquors to Indians under the statute which has since been repealed; and, according to the notions of these gentlemen, the official duty of the Attorney General requires of him, for the benefit of the public revenues of the country, that he shall enforce a penalty which he knows was illegally inflicted. Notions like these are not usually to be met with in the higher walks of the profession of the law.

(o.) There is no evidence to this effect, and the committee ought not to have hazarded an assertion like the present, utterly destitute of truth. In point of fact, the Attorney General did not argue the case before the

"Your committee feel less hesitation in pointing out these derelictions from his duty by the said public functionary, since the evidence on which the same is for the most part founded is corroborated by authentic documents; these make it appear that when it was in agitation to proceed on the question of boundaries *en bornage* against the parties in possession of the seignory of Mille Vaches, in order to adopt proceedings for ejecting them from their encroachments on the King's Posts, the natural desire he entertained to shield them made him delay for a long time in instituting an action *en bornage*; and it required nothing less than the repeated and positive orders of the Governor-in-Chief to make him undertake that proceeding, a culpable negligence which he would probably not have been guilty of if he had not contracted the improper custom of practising as a private attorney, which places him in contact with the interests of Government, and exposes him to the inducement of either neglecting or opposing them, as has been the case with respect to the disputes between the lessee of the King's Posts and the aforesaid Hudson's Bay Company. When, in contempt of the King's Peace, and without any sufficient cause, the servants of the former were torn from their residence at their Posts, and dragged to Quebec as prisoners, the said Attorney General brought bills of indictment against them which were frivolous, and not justifiable by the circumstances attending them, whilst by a still more culpable neglect of his duty, and of the impartiality which ought at all times to be his guide, he favoured his own clients, and granted to them an impunity which is clearly demonstrated by the following facts.

"The Attornies who were employed by the lessee of the King's Posts to maintain his rights with respect to the charges brought against a number of the servants or agents of the Hudson's Bay Company, for having robbed the Indians of the Interior, and having fired with guns and pieces of artillery upon the servants and clerks of the said William Lampson, and being desirous of ascertaining whether the said Attorney General intended to proceed against them in the Criminal term of September last, wrote officially to him, in order that, in case he had determined to proceed, they might send for the witnesses required from the Indian country. That gentleman

magistrates, or upon the *Certiorari* which was afterwards brought, on either side the case was argued before the magistrates by the Advocate General and Mr. Gagy for the prosecutors, and for the defendants by the Hon. Mr. Primrose, and upon the *Certiorari* by Mr. Advocate General and Mr. Gagy, and for the defendants by Mr. Primrose and Mr. Andrew Stuart.

however, not having thought fit to give them any answer, they as they ought to do, considered his silence to indicate his intention of not proceeding in those suits. But how much were they not surprised when they found that the said Attorney General, as soon as he knew that there were no witnesses, came forward with bills of indictment, which he submitted to the Grand Jury, who threw them out, as was naturally to be expected. To the remonstrances which the Attornies of the King's Posts made to him on the subject, who maintained that they were not bound to send for witnesses from such a distance without being brought on, he answered, "It is not my fault, I have done my duty—here are the bills."

"Your committee ought not to omit one very peculiar circumstance which has characterised the conduct of the said Attorney General with respect to the petitioner who is now before the House. With the view of prejudicing the judges of the Court of King's Bench against the said William Lampson, plaintiff in the action *en revendication* of which mention has before been made, it has appeared to your committee that, by the advice and under the direction of the said Attorney General, the petitioner was arrested for perjury, and that upon the sole accusation of the same individuals who had forcibly carried off his Peltries, and who solely escaped from being overtaken by public vengeance, because their protector, the Attorney General, had recourse to expedients which are equally repugnant to honour, to duty, and to the due administration of justice. (p)

"The documents which have been syled before your committee have convinced them that the interest which the Attorney General has taken in these disputes, in favour of the proprietors and lessees of the seigniori of *Mille Vaches*, (the partners and servants of the Hudson's Bay Company) did in

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(p.) In this last paragraph the committee begin with usurping the powers of a grand jury, find a bill upon the accusation of M. Lampson without having before it one iota of evidence upon which the charge was founded, (see the appendix to report of committee) proceed to convict the Attorney General of corrupt misfeasance in office, and end with pronouncing judgment against him for corrupt misfeasance in office, and carry their sentence into effect by punishing him so far as they can; for that man is to be pitied who does not know that censure is punishment, and to a man of honourable character and feelings, punishment too of the most severe kind, far surpassing in intensity any pains merely physical or any penalties merely pecuniary. The other allegations above contained concerning other proceedings had in the criminal court, bear upon the face of them marks of discoloration, and would have barely passed muster in the speech of a manager of an impeachment. They too will be found to be wholly unsupported by the evidence joined to the appendix to the report.

effect influence the opinions which he gave to His Majesty's government on several occasions, and in particular the answer which he gave to the questions which were submitted to him in November last respecting a petition presented in behalf of the Hudson's Bay Company, praying to be authorised to sell strong liquors to the Indians, and soliciting pardons for those of their servants who had so done.

"In this answer he pretended that the provisions of the Provincial Ordinance of the 17th of Geo. III. ch. 7, prohibiting the sale of strong liquors to the Indians, was repealed by the 31st Geo. III. c. 1, and that the Hudson's Bay Company, trading in the Seignior of *Mille Vaches*, did not require either a pardon for having sold strong liquors to the Indians, or a license for selling them in future. (g)

"Yet it is in proof before your committee, that the Courts of Justice have contradicted those opinions by sentencing to fine and imprisonment such of the agents and servants of that Company as had sold strong liquors to the said Indians. (r)

"It appears, therefore, to your committee, that the opinion so given by the Attorney General could only have been instigated by the desire to be of service thereby to his clients, whose interests were opposed to those of the Lessee of the King's Posts, and by a necessary consequence to those of the crown itself. (s)

(g.) And such is undoubtedly the law. After the fundamental error, already pointed out in our remarks upon this and upon the first report of the Committee of Grievances, it is not calculated to excite much surprise that the Committee did not learn much legal wisdom from the mouths of the juvenile lawyers of the committee, who were still reposing in *primis legum incunabulis*, and who seem not to have listened to the adhortation of their master which we read in the first elementary treatise in the following words. *Summa itaque ope, alaeri studio has leges nostras accipite et vasmelipios ne cruditos ostendite, ut spes vos pulcherrima foveat, toto legitimo opere perfecto posse etiam nostram rempublicam in partibus ejus robu credendis gubernare*—D. C. P. XI. Kalend. Decemb. D. Justiniano PP. A. III. Cos.

(r.) To enable our readers to judge of the sufficiency of the grounds upon which the Court of King's Bench at Quebec did hold that the ordinance imposing this penalty was not repealed, we subjoin a report of the case and argument as given at the time; but it is proper to be observed that this judgment was a judgment of two out of four of the Judges, and is not a judgment in *dernier resort*, so far that there are now pending several actions in the Court of King's Bench at Quebec, where on that point is directly in issue, and upon which the judgment of the whole court will be taken, with the exception of the Chief Justice of the province, who is a party to one of these actions, and the judgment thereupon of the Provincial Court of Appeals and of His Majesty in his Privy Council, may and probably will be had.

(s.) Admirably logical!



"In conclusion, your committee beg leave to submit the following resolutions as expressing the opinions of this House relative to the conduct pursued by the said James Stuart, Esquire, in his quality of Attorney General, in the matters which have given rise to the complaint upon which this report is founded. (f)

1. Resolved,—That the Attorney General of this Province is, both by law and custom, the officer who is especially entrusted with the duty of maintaining the rights of the crown, as well as those of the public, as the present Attorney General, James Stuart, Esquire, expresses himself in his letter addressed to the Civil Secretary, and dated on the 24th December, 1830.
2. Resolved,—That the Attorney General of this Province ought not to practise as a private Attorney in any case where he might be liable to be placed in opposition to the interests of the crown and of the public, who are exclusively entitled to his services.
3. Resolved,—That the said Attorney General receives a salary and fees that are sufficient to prevent him from having any need of practising as an Attorney in the Courts in behalf of individuals.
4. Resolved,—That the said James Stuart, Esquire, Attorney General as aforesaid, did, in the matters relating to the complaints made by the petitioner, William Lampson, become Counsel and Attorney for the partners, servants, or agents of the Hudson's Bay Company.
5. Resolved,—That by thus becoming Counsel and Attorney for the abovementioned individuals, the said James Stuart, Esquire, placed himself in opposition to the interests of the Lessee of the Crown, and by a necessary consequence, also in opposition to the interests of the Crown itself.
6. Resolved,—That the conduct of the said James Stuart, Esquire, on the occasion of the disputes pending between the Hudson's Bay Company and the Lessee of the Crown for the King's Posts, has been exceedingly unjust, vex-

(f.) Observe here that the committee have forgotten Mr. Lampson, the Hudson's Bay Company, the encroachment upon the Crown domain, the civil rights, in the investigation of which regularly or irregularly they had entered, and with the touch of a wand they become at once a court for the trial of high crimes and misdemeanors of a public functionary, and proceed to hear, try, and determine, to judge, convict and sentence that public functionary, as will be seen in the resolutions immediately following this paragraph.



atious and equally injurious to the rights and interests of the Crown, and those of its Lessee, in the enjoyment of the Posts known by the name of the King's Posts.

7. Resolved,—That this House perceive, in this conduct of the said James Stuart, Esquire, a new motive to solicit his Majesty's Government to dismiss him from his situation of Attorney General of this province."

I shall proceed in the next number to the examination of this document.

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NO. XIV.

ON THE THIRD REPORT OF THE COMMITTEE OF  
GRIEVANCES.

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Ego nugas maximas omni mea comitate sum complexus, Nymphontem etiam  
Colophonium CIC. AD QUINT. FRAT.

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THE SUBJECT RESUMED AND CONCLUDED.

THE petition to the House of Assembly to which this report relates, begins with stating that the petitioner is the lessee from the provincial government of a large tract of land commonly called the King's Posts, with the exclusive right of trading with the Indians within its limits, at the rent of £1200 a year. That the Hudson's Bay Company have obtained a lease at the rent of £300 a year, of a small tract of ground lying within the aforesaid limits, called the sci-gniory of Mille Vaches, which the petitioner alleges was originally granted, and is now held for the purposes of settlement, but had been used by the Hudson's Bay Company as a trading post, whither they were said to have enticed the Indians of the King's Posts, to the great prejudice of the petitioner and in derogation of the monopoly secured to him by the provincial government. That several civil actions were pending between the Hudson's Bay Company and the petitioner, in which the Attorney General appeared as attorney for the Hudson's Bay Company. This petition proceeds as follows :—

“ That in an action of *Revendication* brought by your petitioner in the Court of King's Bench, under the No. 1212,

against a partner and an agent of the said Company, who took and converted to their own use a lot of furs to the value of £1500, belonging to your petitioner, the said Honourable James Stuart has appeared as the private attorney for the defendants.

“ That in another action *de reintegrande* under the No. 642, brought before the said court by the Hudson's Bay Company against your petitioner, the said Attorney General appears as attorney for the said Hudson's Bay Company, the plaintiffs. And that inasmuch as the said action *de reintegrande* relates to the above named valuable tract of land belonging to the Crown, the said Attorney General has there lent his ministry to persons whose interests were and are adverse to the King's government.

“ That actuated by a natural bias in favour of his clients, the said Attorney General has perverted the administration of justice by preferring numerous frivolous indictments against the agents and servants of your petitioner, by repeatedly causing them to be hurried away in custody from the general places at which they were stationed, and by lending himself to facilitate the escape of his clients (the aggressors) when complaints were preferred against them, on which he, as Attorney General, ought to have prosecuted them criminally with effect.

“ That the said Attorney General has even gone the length of appearing for the defendants, a partner and two agents of the Hudson's Bay Company, in three several cases in which our Sovereign Lord the King is Plaintiff, wherein the said partner and two agents or servants had been condemned to pay three several fines for distributing liquors to Indians, and that he so appeared, knowing that the Crown was interested in recovering a moiety of the said several penalties which the said several parties were condemned to pay.

“ That the Attorney General has abused his power as Attorney General, to favour the said Hudson's Bay Company his clients, the Provincial rivals of your petitioner, to the great damage of your petitioner, and has deprived your petitioner of that support from the Crown which your petitioner had a right to expect, and that the Attorney General has acted in direct opposition to the interests of the government.

“ That your petitioner having found it necessary to apply for relief on certain subjects growing out of the contest between your petitioner and the said Hudson's Bay Company, to his Excellency, the Governor-in-Chief, your petitioner has found his Excellency disposed to do him justice to the full extent of his Excellency's power, a disposition of which your

petitioner has had frequent experience, and in which he feels the most unbounded confidence.

“ But that the matters submitted to his Excellency were of a nature requiring the advice and interference of the law officers of the Crown, and that your petitioner has been deprived of the benefit which he must have derived from the unbiassed opinion and authority of His Majesty’s Attorney General from the circumstances above related.

“ That your petitioner has the more reason to complain of the position in which the said Attorney General has placed himself with respect to the Crown, inasmuch as of the honourable members of the Executive Council, (the constitutional advisers of his Excellency) one is a partner of the said Hudson’s Bay Company, and another the agent of the proprietors of Mille Vaches.

“ Wherefore your petitioner complains of the conduct of the said Attorney General, and prays that it may please your honourable House to grant to your petitioner the benefit of an investigation, that justice may be done in the premises, as the wisdom of this honourable house may prescribe.”

In the Appendix to the report will be found, besides the foregoing petition and the lease of the King’s Posts to the late John Goudie, the opinion of N. F. Uniacke, Esquire, late Attorney General and of George Vanfelson, Esquire, Advocate General, dated 18th April, 1823,\* wherein, as the result of an investigation which does not appear on the face of this document to have been very severe, these gentlemen conclude from all the information collected by them on the subject, that the post of Portneuf belonged to that part of his Majesty’s domain which was leased to the late John Goudie, under the denomination of the King’s Post’s.

\* The gentlemen examined before the committee were the Advocate General and Mr. Gugsy, who were both counsel for the petitioner in the court of Quebec; the petitioner himself, the Hon. Francis Ward Primrose, generally retained for the Hudson’s Bay either as Counsel or Attorney as it suits them: Captain Bayfield who was examined as to the geo-

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\* See Appendix, No. , page .

graphical position and extent of the Bay of Mille Vaches, was the only remaining gentleman examined before the committee.

The correspondence between the law officers of the crown, and the civil secretary, joined to copies of documents as well in the civil as in the criminal prosecutions, constitute the remainder of the appendix.

From these various materials we shall try to extract as succinct an account as is in our power of the transactions referred to by the petitioner, sufficiently extensive however, we hope to enable our readers to judge at once of the reasonableness or unreasonableness of these complaints of the petitioner, and of the correctness of the deductions of the committee.

A letter from the Civil Secretary to the Attorney General, dated the 23d December, 1830, informs the Attorney General that the Civil Secretary had received the commands of His Excellency the Administrator of the Government, to acquaint him that he had received a petition from Mr. Lampson, "stating that he was engaged in a law suit respecting the boundary of the seigniory of Mille Vaches, adjoining the territory of the King's Posts, of which he is the lessee, in which law suit he stated the interest of the Crown to be identified with his own.

"That his lordship would naturally have referred the petition to the Attorney General in regard to certain questions of law which it involved, but that Mr. Lampson having stated that the Attorney General was retained as Counsel for the party opposed to him, his lordship before referring the petition in question, required to be informed whether the assertion of Mr. Lampson was correct, and whether in his opinion the interests of the Crown were identified with those of Mr. Lampson as stated in the petition."

The petition referred to in the letter, it appears was not communicated to the Attorney General; its contents touched the Attorney General both personally and officially; and we must be permitted to express our regret that such an opinion

should have taken place in the high quarter to which the petition was addressed.

The petition, then, which for the first time saw the public light after the presentment of Mr. Lampson's petition to the Assembly, and upon an address of that body to his Excellency, relates the following heads:—

“That the petitioner was the sub lessee of the territory known by the name of the King's Posts.

“That the petitioner has been disturbed in the monopoly secured to him by the original lease and the assignment thereof to him.

“The necessity of establishing the metes and bounds of the seigniory of Mille Vaches below Tadousac, of three leagues in front by four in depth, granted originally as the petitioner alledges for the purposes of cultivation; under which grant it is further alledged, that the proprietors and lessees enlarged their possession to five leagues in front, and thereby embracing the trading post of Portneuf at the mouth of the river running from the interior, where they carry on a trade with the Indians of the King's Posts, to the prejudice of the petitioner, and that in consequence of the uncertainty of the limits, breaches of the peace occurred, which rendered necessary the establishment of metes and bounds of that seigniory.

“That the lease to John Goudie having been executed by an ordinary deed before Notaries, conveyed in law no legal estate, and the petitioner prayed in consequence, that letters patent under the great seal might be directed to issue, and at the same time that a proclamation similar to that of 1823 should also issue.

“That an action had been lately instituted by the Hudson's Bay Company as lessees of Mille Vaches, by the ministry of the Attorney General against the petitioner and his servants for trespasses near the river Portneuf, (the site in dispute) to which both the Hudson's Bay Company and the petitioner laid claim, the petitioner praying for the interference of the Crown to defend their action.—That the result must be of the utmost importance to the Crown, for an extensive tract of land would be wrested from the Crown should the lessees of Mille Vaches succeed in this action. If they retain possession of the river Portneuf and the post established on the bank of that river there would be an end to the exclusive trade of the petitioner, the river Portneuf being an inlet to the interior through which all the Indians of the



King's domain could be enticed from the lessee, and that the sum by him paid annually to the government, and the advances and comforts of the Indians which the petitioner was also bound to provide, could no longer under these circumstances be expected.

"That the petitioner must be permitted to express his regret, that the leading crown officer, (the Attorney General) should be found zealously engaged in advocating an interest so adverse to that of the true interests of the Crown, as that set up by the owners and lessees of Mille Vaches, and to express his hopes that his Excellency, upon mature consideration, will afford such relief and impartial justice as the petitioner is so fully entitled to."

And concludes with the following prayer:—

"That his Excellency would be pleased to take the premises into his immediate and most serious consideration, and thereupon grant to the petitioner the relief prayed for."

The day after the receipt of the abovementioned letter of the 23d December, the Attorney General addressed a letter to the Civil Secretary, wherein, after acknowledging the receipt of it, he proceeds as follows:—

"In obedience to his Lordship's commands, I have the honour to state that the duty of the office of Attorney General, which I have the honour of holding, necessarily precludes me from taking any retainer to support the interests of individuals, in opposition to or inconsistent with those of the crown; and I have not, therefore, become, nor could be retained, by any party adverse to Mr. Lampson, to oppose or question interests in him, which are identified with those of the crown. The case to which Mr. Lampson, I presume, refers, and which, it has erroneously been supposed by him, furnishes ground for his assertion, is a possessory action, (called in the French law an action "*de Reintegrande*," being the "*Interdictum unde vi*" of the Roman law) recently brought by me for the Hudson's Bay Company, against Mr. Lampson and his servants, for having, with force and arms, entered upon a piece of land which then was, and during a long period previously had been, in the peaceable possession of the Hudson's Bay Company, as lessees of the seigniorship of 'Mille Vaches—for having expelled therefrom the servants of the Company—for having continued the erection of, and erected, a house, buildings and fence thereon—and for having since for-

cibly retained possession thereof, &c. This action turns *exclusively* on the alledged fact of possession in the Hudson's Bay Company, at the time of the trespass complained of, without reference to boundaries or right of property. In this action the boundaries between 'Mille Vaches' and the adjoining waste lands of the crown, of which Mr. Lampson is lessee, cannot come in question, or be litigated; nor can any right or interest of the crown be in the smallest degree promoted, injured, or affected by the proceedings to be had, or the decision to be given in this action. The ground on which this action rests is that of *unjust spoliation* by force and violence; and the rule of law applicable to it is, *spoliatus ante omnia restituendus est*. If, as alledged by the Hudson's Bay Company, they have been by force dispossessed by Mr. Lampson of land which was in their peaceable possession, they must recover judgment against him in this action, even though he were the lawful proprietor of the land.

"The law in such case requires that the despoiled party be reinstated in possession, before the question of right can be litigated, and this can only be done in a "*Petitory* action" to be brought by the party which claims the right of property. It is manifest, therefore, that Mr. Lampson could derive no benefit in this action, from a right of property in his Majesty, even if such right existed; and it is equally manifest, therefore, that the interests of the Crown are in no respect identified with those of Mr. Lampson in this matter. He has chosen to incur the high responsibility of taking the law into his own hands and he must abide the result. The Crown is a stranger to the illegal acts complained of by the Hudson's Bay Company, and cannot and ought not to be implicated in the consequences of them.

"I will only beg leave further to observe that if it be supposed that any part of the waste lands of the Crown are included within limits improperly ascribed to the seignior of "Mille Vaches," the remedy for the recovery of it would be found, not in any interference on the part of the Crown in the differences between Mr. Lampson and the Hudson's Bay Company (as Mr. Lampson would seem to desire) nor in any action against that Company, but in an action against the lessors of the Hudson's Bay Company, proprietors of the seignior of "Mille Vaches," for the establishment of boundaries between that seignior and the adjoining lands of the Crown."

This explanation could not be otherwise than satisfactory to his Excellency the Administrator of the Government and

according to the directions of his Excellency, the Civil Secretary writes a letter to the Attorney General dated the 29th of the same month of December, in which he says in reply to the foregoing letter, that the mind of his Excellency was much relieved by the assurance which that letter conveyed, that the interests of the crown were not involved in the case of Mr. Lampson, and more especially as this assurance enabled his Excellency to call without scruple for his professional services as Attorney General in a matter arising out of the statements contained in the petition of Mr. Lampson; that it appeared by the petition of Mr. Lampson, that he was sub lessee of the King's Posts, which he held under the Crown, in the enjoyment of which he complained of being incommoded, owing to the circumstance of the boundary of the seigniory of Mille Vaches, (which touches upon the lands called the King's Posts) not being accurately defined, and the petitioner appealed to the justice of the Crown as possessor of the King's Posts to put an end to this state of uncertainty, by causing the metes and bounds of the seigniory of Mille Vaches to be accurately surveyed and defined. That His Excellency was clearly of opinion that this appeal of Mr. Lampson to the Crown was founded on justice and equity, and that it was incumbent on the crown as possessor, and not upon Mr. Lampson, as sub lessee, to establish the boundary in question, and that his Excellency had therefore come to the decision to comply with the prayer of Mr. Lampson's petition, by directing the necessary legal steps to be taken towards establishing the boundaries and metes of the seigniory of Mille Vaches.

Measures appear to have been forthwith taken to obtain the requisite documents for the institution of this suit, and this, together with the counter petition to his Excellency, of the Seigniors of Mille Vaches, having occasioned some short delay, the action for settling the metes and bounds of that seigniory was instituted and returned in the Court of King's Bench for the District of Quebec. If the fourth resolution of

the Committee has any application at all, it must apply principally, if not solely, to the proceedings above adverted to, and it is apprehended that in these nothing will be found to justify the inference that the Attorney General, by becoming counsel for the Hudson's Bay, had placed himself in opposition to the interests of the lessee, and by a necessary consequence also, to the interests of the Crown itself.

These proceedings constitute the sole subject of complaint in the first petition of Mr. Lampson to his Excellency the Governor in Chief; the utter absence of foundation is plain, and manifest to all.

I come next to the consideration of the additional matters contained in the petition to the three branches of the Legislature, which were referred to the Committee of Grievances of the Assembly, and whose report forms the subject matter of the present enquiry.

These may all be reducible to the complaint, that the law officer of the crown acted as a private advocate for one of the parties, in certain private suits pending between the Hudson's Bay Company and Mr. Lampson, the lessee of the King's Posts. It is not pretended that, in these suits, (as was erroneously set up in the seignior of Mille Vaches) any public interests were involved. If these complaints could be supported at all, they could only be so upon the ground that the Attorney General ought not to act as a private advocate in private suits; and, accordingly, it is upon this ground that the committee, in their first, second and third reports, proceed; yet nothing is more clear than that the law officers of the crown are not interdicted from private practice, either in Great Britain or in any other parts of the colonies or possessions of his Majesty. There seem to be many reasons why their services should be open in private causes to the public at large. It is sufficient here to say, the established rule is that they shall be so, and that rule subsisting, no blame can attach to the public officer acting in private suits.

The committee, then, seem to have been in an error when they saw in this conduct of the Attorney General a new motive to solicit his Majesty to remove him from his situation of Attorney General of this province, upon grounds so slender as these ; and which, slender as they are, no opportunity of answering them had been afforded to the party whose conduct was thus vainly attempted to be implicated.

## NO. XV.

ON THE SECOND REPORT OF THE COMMITTEE  
OF GRIEVANCES.

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È da notare per questo testo quanto siano nelle città libere e in ogni altro modo di vivere detestabili le calunnie, e come per reprimerle si debbe non perdonare a ordine alcuno che vi faccia a proposito: Nè può essere miglior ordine a torle via che aprire assai luoghi alle accuse, perchè quanto le accuse giovano alle Repubbliche, tanto le calunnie nucono; e dall' altra parte è questa differenza, che le calunnie non hanno bisogno di testimone nè d'alcun altro particolare riscontro a provarle, in modo che ciascuno da ciascuno può essere calunniato, ma non può già essere accusato, avendo le accuse bisogno di riscontri veri e di circostanze che mostrino la verità dell' accusa.—*Discorsi sopra la prima deca di T. Livio, di Niccolo Machiavelli*: lib. 1, cap. 8.

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THE first of modern philosophical politicians, the Florentine Secretary, treats in this chapter of the dangers and inconveniences arising to states from calumnies, as contrasted with the advantages proceeding from the legal and regular accusation and trial of all offences of whatsoever nature.—Deeply imbued with the sound ethical principles of Aristotle, and maturely trained in the use of the severe moral analysis of his great master, he here, and elsewhere throughout this noble work, establishes, by means of that analysis, universal political formulæ hardly surpassed in beauty or in evidence by any of the most splendid discoveries of pure geometry or of mixed mathematics.

The principles to which he refers are those of our nature; and, analysing and combining these, he reaches moral results as universal and as enduring as the principles of that nature. As the prism separates the rays of light, and they again become



confounded in one common colour by an unerring law, the same yesterday as to-day and so henceforth for ever, the nature of light remaining unchanged ; so we are led by this writer, by the aid of an analysis, similar in its elements, and differing only in its objects, to the conclusions stated at the head of this text ; conclusions as true in the frozen regions of Quebec, and as applicable to the humble affairs of a colony, as they were under the bright sun of Italy, and in the great empire which once overshadowed the whole earth. The character of calumny, as contradistinguished from accusation by Machiavelli, is, that the one is sanctioned and regulated by the law, whilst the other depends upon the mere caprice of individuals ; that the one requires, on the part of the accuser, evidence of his charges, thereby checking unfounded aspersions on private or public character, whilst the other is subject to no such restraint. In the one the party accused may have the benefit of a full and fair defence, whilst in the other he is condemned and mulcted in his fair fame, without being heard. He adds, as a further check upon unfounded accusations, that, in the event of failure in maintaining the accusation, the accuser should suffer severe and condign punishment. One other effect of regular accusations which he also points out is, that they create a salutary fear throughout the society at large, and prevent offences from being committed, thereby steadying social institutions, deterring from crime and encouraging to virtue, whilst calumnies serve only to excite angry passions in those who are the subject of them, and those who publish them, thereby disturbing the equability of social life, without producing any beneficial effects whatever.

And here it may not be amiss to point out some of the mischiefs arising from proceedings like those under consideration—mischiefs which Machiavelli seems to have had in his mind when he wrote the chapter from which the extract at the head of this paper is taken, but which, following the method of the true Aristotelian philosophy, of touching only the *apices rerum*, as connected with the subject immediately in hand, he

has rather hinted at than fully disclosed. I will try to supply this part of the subject in the best way I can.

The desire of the esteem of our fellow men is an instinctive elementary principle of our nature ; like the law of self preservation, simple, inherent, and independent of all ratiocinative processes ; it exhibits itself in the infant at the dawn of perception, and waits not the developement of reason ; it does for civil society what the law of self preservation does for the individual. Without the latter, man could not live—without the former, he could not live as a gregarious and social animal. It is the cement of all human society, both natural and artificial ; we owe to it many of our pleasures : imagination can conceive no higher misery than that of an individual deprived of all consideration with each, every and the whole of his species. The captain of banditti, for this reward, surpasses his fellows in courage and daring ; and, in the division of the spoil amongst his fellows in crime, maintains honour even among thieves.—The legislature cannot, and ought not, to lose sight of this principle, in accusations against any private individuals, but particularly against public officers of the state. Legal accusations and regular trials maintain this principle in its efficacy, by at once protecting, defending and securing to the innocent and virtuous the esteem of their fellow men ; whilst, on the other hand, the guilty are deprived of this inestimable boon ; and all the citizens of the state come to be incited to virtue by the hope of praise, and deterred from crime by the fear of blame : thus rendering the two great movers of man, hope and fear, subservient to the advancement of truth and of right.

Let us now see how calumny (I use the word in the philosophical sense assigned to it by Machiavelli) operates. It obviously annihilates the motive of action here referred to. Let calumny be admitted, and then the esteem of our fellow men cannot be maintained by good actions, nor lost by bad ones. The hope of that esteem which legal accusations sustain, and the fear of the loss of it which they inspire, at

once disappear, and have their places supplied by the rancorous passions which calumnies imply in the framers of them, and often also by the hate which is too apt to be naturally engendered in the breasts of those who suffer from them. But if this be true as to the citizens generally, it is eminently true as to the officers of government. Their character is public property, not in the sense in which some short sighted demagogues so treat it, to be pillaged, wasted, and cast into the dust and mud of their pleasure or caprice ; but, on the contrary, to be sustained when good, to be exposed when bad, to the admiration in the one instance, and to the contempt in the other, of their fellow subjects. For this purpose, the shield of public accusation and public trial is placed before the innocent, and the sword of public justice cuts down the guilty. Again, all government rests on public opinion ; destroy the confidence of a large majority of any given country, in the public officers of that country, and you destroy the government of the country. Let the accused officers be tried, convicted, removed, and, if their offences require it, punished, and you reform that government ; the first course of proceeding, then, produces anarchy—the last, reformation. How far the proceedings which it has been our duty here to bring under the public eye, and subject to the public judgment, have the character of the former or of the latter course, I leave to my readers to determine.

It is upon this report only (for the other two reports of the Committee of Grievances had never been concurred in by the House) that were founded the resolutions already given, recommended by the Committee of Grievances, and adopted by the House, and embodied in their address to his Excellency the Governor in Chief.

To complete my history of this part of the subject, it is only now necessary to give his Excellency's answer to the address, which is in the form of a message to the Assembly, and is as follows :—

**" AYLMER, Governor in Chief.**

**" The Governor in Chief having taken into his most serious consideration the request of the House of Assembly, to suspend from the exercise of his official functions the Honourable James Stuart, Attorney General of this Province, until the King's pleasure be known, touching certain matters of complaint preferred against the said Attorney General, in a petition from the House of Assembly addressed to his Majesty—now informs the House that he has decided upon suspending the Attorney General from the exercise of his functions accordingly.**

**" Having taken this important step, in compliance with the request of the House of Assembly, the Governor in Chief relies upon the justice of that House to furnish the Attorney General with copies of the various documents upon which the charges against him are founded.**

**" The Governor in Chief cannot too pointedly guard the House of Assembly against drawing an inference from his proceeding on this occasion, that he has thereby taken a part, or pronounced a judgment, in the case now pending between the House of Assembly and the Attorney General; for it is a cause in which he cannot suffer himself to be considered as either judge or party.**

**A.**

**" Castle of St. Lewis,  
Quebec, 28th March, 1831." }**

**It had been my intention to have gone somewhat fully into this part of the subject ; but since writing a preceding number of these papers, where this intention is expressed, the memorial of the Attorney General to Lord Goderich having come under the public eye, any observations of mine would be wholly superfluous ; and I deem it sufficient to subjoin to these papers an extract from the Memorial and accompanying correspondence, as affording all the information that can be desired in relation to the suspension of the Attorney General.\***

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**\* See Appendix, No. , page .**

## NO. XVI.

## LEGISLATIVE COUNCIL.

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*Factio haud dubio regis, cujus beneficio in curiam venerunt.*

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**THE** present political condition of the British Colonies cannot be fully understood without a reference to the history and political institutions of the old Colonies of Great Britain.

In these the Executive Council possessed the power of a Council of advice and control, and also that of a Legislative Council. The defects in the constitution of this body in the old system will best be understood by reference to a passage in a work of Mr. Mazeres, the first Attorney General of Lower Canada, after the cession of the country.\*

The two great defects therein stated are the paucity of the numbers of these old Councils, and the members thereof not being absolutely independent of the Governor; the consequence of which was that they had not sufficient weight to check the violence and aberrations of the popular assemblies.—The first innovation in the old Colonial system is to be found in the Statute 14 Geo. III, chap. 83, commonly called the Quebec Act.—The provisions of the Act relating to this subject, are to be found in the 12th, 13th, 14th, 15th, and 16th clauses of it.—By the first of these clauses it is provided,

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\* See Appendix No. , page .

"That it shall and may be lawful for His Majesty, his heirs and successors, by warrant under his or their signet or sign manual, and with the advice of the Privy Council, to constitute and appoint a Council for the affairs of the Province of Quebec, to consist of such persons resident there, not exceeding twenty-three, nor less than seventeen, as His Majesty, his heirs and successors shall be pleased to appoint; and upon the death, removal or absence of any of the members of the said Council, in like manner to constitute and appoint such and so many other person or persons as shall be necessary to supply the vacancy or vacancies: which Council so appointed and nominated, or the major part thereof, shall have power and authority to make ordinances for the peace, welfare and good government of the said province, with the consent of His Majesty's Governor, or, in his absence, of the Lieutenant Governor, or Commander in Chief, for the time being."

The 2d provides, "that nothing in that act shall extend to authorize or empower the said Legislative Council to lay any taxes or duties within the said province, such rates and taxes only excepted as the inhabitants of any town or district within the said province may be authorized by the said Council to assess, levy and apply, within the said town or district, for the purpose of making roads, erecting and repairing public buildings, or for any other purpose respecting the local convenience and economy of such town or district."

The 3d requires every ordinance by the Council to be laid before His Majesty, within six months after its passing, and gives a power to His Majesty of disallowing the same by his order in Council.

The 4th provides, "that no ordinance touching religion, or by which any punishment may be inflicted greater than fine and imprisonment for three months, shall be of any force or effect, until the same shall have received His Majesty's approbation."

And the last, evidently having in view the first of the evils above adverted to, arising from the paucity of the number of councillors in the old colonies, provides, "That no ordinance shall be passed at any meeting of the Council where less than a majority of the whole Council is present, or at any time except between the first day of January and the first day of May, unless upon some urgent occasion, in which case every member thereof resident at Quebec, or within fifty miles thereof, shall be personally summoned by the Governor, or in his absence, by the Lieutenant



Governor or Commander in Chief for the time being, to attend the same.\*

Apart from this Legislative Council, was appointed an Executive Council, by the mere exercise of the royal prerogative.

From a work published in London in 1789, and, though anonymous, evidently coming from a man of information, the following is an extract:—

"The Chamber of the Legislative Council of Quebec was as close and impervious as the Divan at Constantinople.—And though the members do not now consider themselves obliged to conceal what passes in the Legislature, yet the public, as the door of the Council Chamber is still shut against them, can only learn through the *imperfect medium of common rumour, what laws or acts are at any time agitated in the Legislature.*"†

The work in question contains numerous anecdotes, showing the misgovernment of the Colony under this system.‡—This brings us down to the passing of the Constitutional Act of 1791. The framers of that act seem to have been perfectly sensible of the insufficiency of the correction of the old system attempted by the foregoing Act of 1774. Besides providing for the convocation of an assembly, in which, in conjunction with the Governor and Legislative Council, the whole legislative power is vested, they retained some provisions manifestly framed with a view to give additional weight to the Legislative Council. The power of selecting them is given to his Majesty—they are not to be fewer than 15—they must be of the full age of 21

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\* See, in the Appendix, No. , page , an account of the instructions to the Governor of the Colony of Georgia, as given by Mr. Mason, in his before mentioned work.

† Legislative Council, February 14, 1780—motion by Mr. Grant—"Whether a member of council, acting in his legislative capacity, may not take a copy of such papers as are laid before the Board by His Excellency the Governor, or any other person, in order deliberately to his cabinet, to instruct his mind and form his opinion of the matter committed to him."—Voted and resolved in the Negative.

‡ See Appendix, No. , page .

years, natural born subjects of his Majesty, or subjects of his Majesty, naturalized by acts of the British Parliament, or subjects of His Majesty, having become such by the conquest and cession of the province of Canada. They shall hold their seats for the term of their lives, with only two exceptions, residence out of the province for the space of four years continually, without the permission of the person administering the government, or taking an oath of allegiance or obedience to any foreign prince or power. A further clause in this statute enables his Majesty to annex to hereditary titles of honour, the right of being summoned to the Legislative Council. The power of nominating and removing the Speaker is given to the Governor.

So far as the Executive Council is concerned, it seems to have been intended to be kept a body apart from the Legislative Council, and it is therein constituted a Court of Civil Jurisdiction, within each of the said provinces, respectively, "for hearing and determining appeals within the same, in the like cases, and in the like manner and form, and subject to such appeal therefrom, as such appeals might, before the passing of this act, have been heard and determined by the Governor and Council of the province of Quebec; but subject, nevertheless, to such further or other provisions, as may be made in this behalf, by any act of the Legislative Council and Assembly of either of the said provinces respectively, assented to by his Majesty, his heirs or successors."—This Council is made a Council of Control, as to the erection of parsonages, and the endowment thereof.

In the act of 1774, nothing was said respecting the Executive Council, but under the common constitutional law of the colonies it was appointed by the King, as a council of advice in all cases, and of controul in some.

By the King's instructions, they are also a council of control, so far as the granting of lands is concerned. It is much to be lamented, that they were not also made a council of controul, as to the nomination to public offices, and as to

the removal from them. The power of control vested in the Executive Council seems to have been better provided for in some of the old colonies.

It has been stated in a previous number, that the Government of Lower Canada has in point of fact assumed the form of a mixed Government, consisting of autocracy and democracy; and this is the proper place to point out the causes which have led to so unfortunate a result. The surviving members of the Legislative Council, established under the authority of the 14th of the King, with but few, if any addition, came to be appointed under the authority of the Constitutional Act of 1791; and carried into the body erected under the last mentioned act, all the habits and feelings which had been formed under the operation of the system established by the 14th of the King.—They were all or nearly all placemen, and were nominated by the Governor.—The right and sound policy of keeping apart, the Executive and Legislative Councils existed upon paper, but nowhere else, as all, or nearly all the Executive Councilors were also members of the Legislative Council. So intimately blended and confounded came to be these two bodies, that, at the hour I am now writing, the clerk, the assistant clerk and law clerk are members of the Executive Council, whilst, *en revanche*, the clerk of the Executive Council is a member of the Legislative Council.—It is but fair to add, that of late years several independent country gentlemen and merchants have been added to the Legislative Council; but their number is not sufficiently great to alter the political character of this body. One single fact will shew how completely, down to a very late period, the spirit infused by the Council of 1774 had been imbibed and preserved by the Council under the Constitutional Act.—It is not more than five years since strangers have been admitted to the debates of the Legislative Council, and it is only since the opening of the present session of the Legislature that we can read them in the public newspapers. These are happy indications, and

shew a great and salutary change in the public opinion. I ought not to have omitted, as influencing the character of the Legislative Council, the circumstance of its containing several Judges of the supreme court of original jurisdiction in the number of its members, whereby the judicial functions came to be mixed up with the legislative, without any adequate considerations of public policy to justify such an anomaly,

Although far from considering the Report of a select Committee on the civil government of Canada, ordered by the House of Commons to be printed on the 2d July, 1827, to be a monument either of sagacity or of wisdom, their opinion upon this subject is, I think, quite correct, and will be found in the following paragraph:—

“ One of the most important subjects to which the enquiries of the Committee have been directed, has been the state of the Legislative Council in both the Canadas, and the manner in which these assemblies have answered the purposes for which they were instituted. Your Committee strongly recommend that a more independent character should be given to these bodies; that the majority of their members should not consist of persons holding offices at the pleasure of the crown; and that any other measure that may tend to connect more intimately this branch of the constitution with the interest of the Colonies, would be attended with the greatest advantage. With respect to the Judges, with the exception only of the Chief Justice, whose presence, on particular occasions, might be necessary, your Committee entertain no doubt that they had better not be involved in the political business of the House. Upon similar grounds, it appears to your committee that it is not desirable that Judges should hold seats in the Executive Council.”

I must, at the same time, say, that the charge contained in the petitions to which this report applies, against the Legislative Council, for not having passed useful bills sent up to them by the Assembly, was, if not in all, at least in very many instances, entirely without foundation.\* To enter

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\* It may be observed here, incidentally, that nothing more strongly evinces the want of independence in that body, than the vacillations of

into the grounds of this opinion, would much exceed the limits of this paper, inasmuch as it would necessarily involve an investigation and examination of the various public measures, the rejection of which is complained of by the Assembly.—*Ab uno disce omnes*.—A bill for a new organization of the courts of justice, was introduced by the Honorable Denis Benjamin Viger, then a member of the Assembly, and passed for several successive years by that body, and sent up to the Legislative Council, where it was rejected.

Seeing the temper of mind in which the Legislative Council then was, the Assembly became afraid, that, although the Council had oftentimes rejected it, (and I believe that no man can read it without saying they rightly rejected it) they would now adopt it, and that the whole judicial system would be thrown into absolute and irretrievable confusion ; they, therefore, found themselves constrained to reject the bill in question, by a large majority, in the session immediately after the publication of the Canada Report.

Under present circumstances, one may say, (and it is a subject of congratulation to the country) that the power of the official classes in the Legislative Council is utterly and for ever annihilated. Whether the proposed changes, which would have the effect of vesting the whole of the authority of that body in the large landholders, to the exclusion of all other classes of the society, would be beneficial, is a question not lying within the scope of the present enquiry, which has much exceeded what I had originally contemplated, and which I am anxious to bring to as speedy a conclusion as I can.

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its policy, according to the views taken by each successive Governor of the public policy to be pursued in a colony. Let the course of the policy of the Legislative Council, and its tone under the administration of the Earl of Dalhousie, be compared with the same under Sir James Kempt, and with that of the Provincial Assembly under the administration of Lord Aylmer. The Canada Report had certainly the effect of making a very great change in the proceedings of that body ; and this change demonstrated that the Legislative Council had not all the independence which it ought to have.

## NO. XVII.

## COURT HOUSES AND GAOLS.

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FIAT JUSTITIA.

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On the 22d of February last, the following message from his Excellency the Governor in Chief was delivered to the Assembly :—

“ The Governor in Chief desires to bring under the notice of the House of Assembly the subject of the message of his predecessor, dated the 1st of February, 1880, recommending to the House of Assembly the expediency of providing for the erection of Court Houses and Gaols in the most populous counties of the province. The Governor in Chief fully concurs with his predecessor, in the view taken by him in his message above referred to ; and he considers it, therefore, unnecessary to say more at present regarding the contemplated measure, further than to recommend it to the consideration of the House of Assembly, as calculated, in his opinion, to produce the most beneficial consequences to the province at large.”

Upon this message being taken into consideration by the House, it was resolved as follows :—

That it is the opinion of this Committee, that it would be expedient to build Court Houses and Gaols in the Counties of this Province, so soon as the inhabitants shall think fit. That it is the opinion of this Committee, that, in order to provide for the erection of a Court House and a Gaol, a public meeting of the freeholders and landholders thereof shall be convened ; and that the expediency and necessity of



building the said Court House and Gaol shall be decided by a majority of the said freeholders and landholders then present ; and that the said decision shall bind the whole of the inhabitants of the said county to contribute their quota to the said buildings.

That it is the opinion of this Committee, that the majority of freeholders and landholders present at such meeting shall decide equally as regards the place where such Court House and Gaol as aforesaid shall be erected.

That it is the opinion of this Committee, that one half of the expenses incurred in building the said Court Houses and Gaols be paid by the province ; provided the said half do not exceed six hundred pounds currency, and that the other half be paid by the inhabitants of the said counties.

That it is the opinion of this Committee, that the half of the aforesaid expenses to be paid by the freeholders and landholders, be apportioned to each of them in proportion to the superficial extent of ground which each possesses—the proprietors of emplacements only paying as proprietors of one half or a third of a piece of land of sixty to ninety arpents in superficies.

That it is the opinion of this Committee, that when a court-house and a gaol shall have been erected in a county, the Magistrates residing in such County shall have the power to hold Sessions of the Peace therein, at least four times a year.

That it is the opinion of this Committee, that the said Magistrates in Session shall have criminal jurisdiction in all matters commonly cognizable in Courts of Quarter Sessions.

Resolved—That it is the opinion of this Committee, that the said Magistrates in Session shall also have a limited civil jurisdiction therein.

That it is the opinion of this Committee, that it would be expedient to appoint a Clerk of the Peace to keep the register of the said Court, and a gaoler to take charge of such persons as may be committed to his custody.

That it is the opinion of this Committee, that the inhabitants of the counties, and not the Province, ought to support the costs of repairing and keeping in repair such said court-houses and gaols.

One of the most striking features in these resolutions, is that it delegates to the town meeting the power of determining whether there shall be a court-house and gaol, or not, also where it shall be placed. The last of these powers is essen-

tially legislative, and this with some other parts of the measure has a democratic hue, which does not well become this country. The transition produced by the adoption of the measures predicated upon these resolutions would be too abrupt, violent and general.

I avail myself of the permission given to me by a friend to insert here some observations of his, in which I concur, except as to the whole of the expense of erecting the court-houses and gaols being, in the first instance, defrayed out of the public chest.

Of the necessity of organising county courts in this Province, there seems to be but one opinion. But when we come to the details of this measure, we do not find the same unanimity to prevail. The two main opinions relate to the residence or non-residence within the body of the county of the individual or individuals to be charged with the judicial functions therein.—To my mind, I own, that the objections to the Judge being a resident Judge, seem to be insuperable—combining, as he necessarily would, in the majority of cases, the powers of a judge of fact as well as of law, and thus performing the functions of judge and jury, he ought to have as little connection with the society as possible. Living in the society itself, it would be almost impossible for him to avoid being mixed up with the little dissensions for which small societies are proverbial.

So, too, if it were required, that the Judge should reside within the county, it could hardly be expected that men of competent qualifications at the bar could be found who would be willing to make the sacrifice for any remuneration which the public could afford for this service. Whilst, on the other hand, if the attendance of the county judge were only occasional, during the assigned terms, and in the vacations of the Superior Court of King's Bench, it would not interfere with the Barrister's practice in any of the three principal Courts of the Province; and the remuneration afforded by the public for this temporary service being not more than equal to that to be

given for a personal residence, the government and the public might command the best talents of the whole bar.

It is considered that the county courts might take cognizance of personal actions to an amount not exceeding £25 or £30, with the right of appeal to the Court of King's Bench, in each district, in all cases above £10. It might be expedient also that the county Judge should preside for two or three years in the Court of Quarter Sessions, to be established within the county, to exercise the general powers of criminal jurisdiction, vested in the general Courts of Quarter Sessions now in existence.

It is worthy of consideration also, whether it might not be expedient to vest in the Court of Quarter Sessions all these powers of local administration, as to roads, &c., which are given to Courts of a similar jurisdiction in the adjoining Colonies. The Court of Quarter Sessions, one of the important branches of the institutions of this Province, would thus be most beneficially assimilated to the Constitution of Lower Canada.

However much one must feel convinced with His Excellency, of the necessity of the measure proposed, it cannot be denied that there would be some risk in suddenly making so important a change in the institutions of this country, as to establish a court in each county, with the power of the Quarter Sessions. It would not be easy to find in every part of the Province, a sufficient number of persons fit to discharge the new duties, thus to be assigned to them. And if these were ill performed, the whole system might fall into unmerited discredit, from which it would not be easy afterwards to raise it. Such a disappointment might be productive of great and irreparable inconvenience and injustice. To meet this last difficulty, it is suggested that the erection of two or three county courts in the first instance, in places where they have been desired for a long time—such as Kamouraska, the river Chambly, Hull, Mississkoui Bay, and wherever there is a considerable number of wealthy inhabitants, would be the safest

course that could be pursued. As to any other county jurisdictions, they might be erected from time to time, in a ratio proportioned to the public wants of the different sections of the Province.

The expense of the erection of the court-house and the gaol should, in the first instance, be borne by the Province at large, but should ultimately fall upon the county in this manner; the expense should be reimbursed by the county, by a tax upon every process issuing out of the county court. This is not without precedent.—To the system of county courts must be added, as a very important appendage, the trial of criminal offences, not cognizable before the Court of Quarter Sessions, as at present constituted. The country parts of the Province would thus be relieved from the burdens to which they are subjected by their attendance upon the criminal courts in the cities, and from the anomaly whereby they are excluded from the functions of jurors in criminal cases—which functions are now discharged by the inhabitants of the cities and the country parts immediately contiguous.

## NO. XVIII.

## FINANCES.

It what has already been observed be generally true, that it is hardly possible for any one to form a right judgment upon the public questions now in controversy in this Province, without a more minute knowledge of the old colonial controversies than generally obtains, it is eminently so as to the subject at the head of this paper. The ancestors as well of the inhabitants of this Province as of the adjoining states, were not reared as we have been in the lap of ease ; they were disturbed by continual wars, and wars too of a peculiarly ferocious character. The husbandman felled the forest trees, while his rifle leaned against some neighbouring stump. They grew up amongst continual alarms, and the blood and treasure expended by the respective colonies, were, considering the smallness of their means, enormous. Each resorted to the aid of savage allies, and an hostility embittered by the religious prejudices which then obtained on both sides, was further aggravated by the occasional horrors of savage warfare. Their respective parent States, England and France, were also prodigal of blood and treasure in these contests. No inconsiderable portion of the national debt which now oppresses Great Britain, is referrible to this cause ; and the derangement of the finances of France, which was one of the main causes of the great catastrophe we have in our time witnessed, was in a great degree derived from the same source. Mr. Chalmers, I think, estimates the expenses incurred by Great Britain in these wars, at one hundred millions

sterling.\* As far as the French government was concerned, an idea may be formed of the astonishing efforts made within the colony at that time, from some facts stated by M. Bigot, then Intendant General of Canada, in his defence upon an accusation of peculation preferred against him, after his return to France, on the conquest of this country in 1759. According to him, and he could have no interest in augmenting the amount, the stores sent to Lewisburg and the island of St. John in 1750, amounted to 333,600 livres 15 sols and 8 deniers, and the expense for the posts at the river St. John and Chediak, for the same year was 297,389 livres 19 sols and 4 deniers. It appears in the same memorial, that there were sent to the river St. John in 1751, 800 barrels of flour and 100 barrels of pork by the French government. The estimate by M. Bigot for the expenses of the frontier posts of Acadia for the year 1751 amounts to 826,503 liv. 9 deniers. The expense in that year at the post of the point of Beau Séjour alone, for provisions distributed, amounts to 60,000 livres. The expenses of 1752 exceeded those of 1751.

In 1753 the Marquis Du Quesne attempted to take anew possession of the river Ohio, and built several forts there.—The Sieur Marin, whom he sent thither with a numerous body of men, built several forts in that country, and among the rest a fort to which the name of the Governor in Chief was given. Mr. Bigot states the expenses incurred for that expedition, up to the first Oct. 1753, at 2,658,230 liv. 9 sols and 4 deniers. He stated in his despatch of that month, to the French Minister, that he had informed the Marquis Du Quesne, that, from the manner in which the expedition was carried on, it would cost at least three millions, to which the General had answered, “que c’était le salut du Canada, et qu’on ne pouvoit s’en départir.” In the disbursements for the operations ending on the 1st of October 1753, as stated by M. Bigot, is not included

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\* I have availed myself freely of some papers published in the Quebec Star on this subject.



the expense of a detachment of five hundred and forty men, who were to proceed under the command of the confidential friend of M. Bigot, M. Pean, to the Belle Rivière, nor the wages of the workmen in digging the foundations of, and in building the forts, nor the expenses of the transport of eighteen or twenty thousand quintals of merchandize from Presqu'isle to the River-aux-Bœufs, a distance of eight leagues, which was effected on men's backs. In 1753 the same efforts were continued; and, besides a large issue of paper currency which was depreciated thirty per cent, M. Bigot drew Bills of Exchange on the French Treasury, to the amount of three millions and a half. The expenses in the years 1754 and 1755, of the French Government, in carrying on their project of aggrandizement in North America, were enormous. The Intendant's estimate for the French posts, on the Ohio alone, in the year 1756, amounted to between two and three millions of livres. The estimate of the same officer, transmitted from Canada to France, on the 29th August, 1758, for the following year of 1759, amounted to from thirty one to thirty three millions of livres. It appears that twenty four millions were actually drawn for, before the taking of Quebec, in September 1759.

The sacrifices made by the old English Colonists, it has already been said, were great; the taking and securing to the crown of Great Britain the island of Cape Breton and its dependencies, by the several provinces of Massachusetts Bay, New Hampshire, Connecticut, and Rhode Island, cost those Provinces above £200,000 sterling, which had been raised and advanced on their public credit; and, on the 14th April, 1748, a Committee of the House of Commons came to the Resolution, that it was just and reasonable they should be reimbursed. †

† Vide Burke's Works - Speech on Conciliation with America, Vol. 3, p. 99. - When Mr. Grenville began to form his system of American Revenue, he stated that the Colonies were then in debt £2,600,000 sterling money, and was of opinion they would discharge that debt in four years. - *Ibid.* p. 101; but it appears that this calculation was too sanguine. The reduction was not completed till some years after, and at different times in different colonies.

The whole pecuniary expenditure of the British Colonies during six years preceding the peace of 1763, is stated by Dr. Franklin at ten millions sterling; and, during that period of time, they kept in the field, supported, clothed and fed an army of twenty five thousand men. It is said that one man out of every five capable of bearing arms in the New England colonies, had been in the field on actual service. It will be recollected that at the peace of 1763, the population of the colonies hardly reached three millions.

Although the taxes upon the colonies of France in this country, were by no means so burthensome as those in the adjoining provinces, yet there can be but little doubt, that the war pressed more heavily upon the Canadians of that day, than it did upon the British North Americans. They were much fewer in number, I think they did not exceed 60,000 souls; almost all the men capable of bearing arms, probably all who were not prevented by some bodily infirmity, had been employed in long military expeditions. The conscription was regulated by no law, it depended only on the arbitrary will of their military superiors; they suffered much from the arrogance of their military regulars; duels between the privates of the regular and of the provincial forces were frequent. The ill will between these two bodies of men will be sufficiently explained by one single fact—a serjeant of the regulars had the rank of senior captain in the militia. Their pecuniary sacrifices were also much greater than those of their then North American neighbours, not in the shape of taxation, but by having their provisions taken from them by the military authorities, at prices much below their value, paid for in depreciated paper currency, and by a large amount of that currency distributed throughout the province, never having been redeemed. With equal gallantry on both sides, there were circumstances which rendered the result of the contest which afterwards happened certain.

A variety of fortunate circumstances preserved the British colonists who had been driven from their home by religious

and political oppression, (preserved them at least to a very large extent) against the efforts made to renew the same on this side of the Atlantic. The ardent spirits, who would have disturbed the peace of the parent state if left at home, enlarged her and their dominions here. That benefit, which the patriotic and virtuous Admiral de Coligny thought he had secured to his dissenting brethren in France, by obtaining permission to transfer to the French North American colonies, with free liberty of worship, French Huguenots, was actually possessed by the British colonists; and there can be but little doubt, that if the convention of the Admiral de Coligny had been preserved, a very large portion of the wealth, enterprize and industry, which the revocation of the edict of Nantes threw into the hands of the enemies of France, would have fructified her North American possessions, and that the French language would, at this day, have been the dominant language from the gulf of St. Lawrence to the gulf of Mexico. Another cause subordinate to this was, the difference of management of the Finances of the two countries in North America; but as this is somewhat of a digression, I return to my main subject.

The peace of 1763 annexed Canada to the British Empire. Soon after that event Great Britain, for the first time, set up the pretension of raising a revenue in her North American colonies for imperial purposes, and this by the authority of the Imperial Parliament. It seemed reasonable that the colonies should contribute to the expenditure thus incurred for their defence, nor does this appear to have ever been denied by the old colonists. The difficulty was as to the quantum, and as to the authority by which as well that as the mode of levying the money, should be regulated. Pretensions were then set up on the part of the parent state, precisely similar to those which Athens, between two and three thousand years before, immediately after the battle of Salamis, had made and successfully enforced, to the great prejudice of her colonies and to the ultimate ruin of herself.

It will be seen that the Act of the Imperial Parliament, 7. Geo. III, commonly called Mr. Grenville's Act, imposing duties within the colonies to be applied to *imperial purposes by the Imperial Legislature*, is here referred to. It is quite plain, that if the principle of this act had been submitted to by the old colonies, they would literally have become predial slaves. If one set of men have a right to impose at pleasure pecuniary burthens on another set of men, and apply these resources as they like, then all property is extinguished or rather becomes vested exclusively in those who exercise such rights; and the nominal owners hold a precarious possession, dependent on the will of their Lords. It was this claim which excited, and rightly excited, so violent a ferment in the old colonies, and in the end produced their dismemberment from the empire.

Mr. Burke informs us, that the news of these troubles did not arrive in England until the end of the following October. Lord North and his friends were driven from power, and the new ministry under the Marquis of Rockingham, entered into office the 10th July, 1766. The principal measures in the short administration of the Marquis of Rockingham, were the repeal of the Stamp Act and the enactment of the Declaratory Act. With these two acts the second period of the history of colonial policy ended, and the third commenced; but the Marquis of Rockingham did not remain long in power, and the following year (1767) a new act was passed, imposing duties on glass, tea, paper and painter's colours imported from Great Britain into America, the object of which was rather to enforce the right of taxing the colonies than immediately to raise any revenue from the exercise of it.

The next acts of the British Parliament relating to this subject are, the 14th and 18th of the late King, and to them we shall solicit the attention of our readers in the following number.

## No. XIX.

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FINANCES.THE SUBJECT CONTINUED.

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*Statutes of the 14th and 18th of the King.*

The statutes known in the colony by these names, are the 14th, Geo. III. c. 88, intituled "An Act to establish a fund towards further defraying the charges of the administration of justice and support of the civil government, within the Province of Quebec, in America;" and the 18th Geo. III. c. 12, intituled "An Act for removing all doubts and apprehensions concerning taxation by the Parliament of Great Britain, in any of the colonies, provinces and plantations in North America and the West Indies; and for repealing so much of an Act made in the 7th year of the reign of his present Majesty, as imposes a duty on tea imported from Great Britain into any colony or plantation in America, or relates thereto."

So much has been said respecting these statutes, that it may be proper here to give a short history of them before proceeding to examine into what is their legal construction.

At the time of the cession of Canada to Great Britain, there were legally existing in the Province of Quebec the following duties upon wine, brandy and rum, imported into it from old France, and the other dominions of the French King, to wit, 7s. 6d. sterling per hogshead upon wine; 4½d. per gallon upon brandy; and 12s. 6d. per hogshead upon rum. These, by an edict of the King of France, passed in January, 1747,

were increased to the following rates, to wit, to 10s. sterling per hogshead upon wine, 6d. per gallon upon brandy, and £1 per hogshead upon rum. This augmentation of these duties was made for a special and temporary purpose, namely, to defray the expenses of the fortifications of Quebec, and was appointed to continue only for three years, or till the year 1751. These augmented duties, notwithstanding this limitation of time appointed by the edict that augmented them, did yet continue to be levied and paid by the Canadians after the expiration of the said three years, and down to the time of the annexation of Canada to the British Empire. But there was no authority for this continuation of them by any edict of the King of France, except doubtful expressions in the edict of February, 1748. Therefore, these augmented duties were raised illegally from 1751 to 1759, and during that period the French officers of government in Canada ought only to have raised the old duties upon those commodities above mentioned. It is now proper to mention what had been done with respect to them after the years 1759 and 1760, down to the year 1764.—In the year 1761, Major General Murray, who was left in Canada, in the chief command of the King's troops there, imposed, by his own authority, arising from that military command, the following duties on strong liquors imported into that country, viz: 5s. Halifax currency upon the importation of every hogshead of wine, 6d. of the like currency upon every gallon of rum or brandy imported into Quebec, except British brandy or corn spirits made in Great Britain, which, in favour of the trade with Great Britain, he exempted from this duty, and 4d. of the same money upon every gallon of shrub.

These duties were regularly paid from the year 1761 to the year 1765, when the military authority by which General Murray had imposed them was at an end, and the country was governed by him as Civil Governor, in virtue of his Majesty's commission of Captain General and Governor-in-Chief of the Province of Quebec, which had been received and pub-



lished there in August, 1764, and then they ceased to be collected. The whole amount of such duties levied during those four years was £12,223 currency, as is to be collected from an account of these duties drawn up by the direction of the said General Murray, and delivered by the commissioners of his Majesty's Treasury in 1768, to the Receiver General of the Province of Quebec. These duties, it will be observed, were not precisely the same with those which had been paid in the time of the French government.

Although the merchants of Quebec paid those duties, they were considered by many of them to have been illegally imposed; and, in consequence of this opinion, when General Murray returned to England in the year 1766, five English merchants, who had imported French brandy and New England rum into Quebec, and had paid these duties to the General's collector at Quebec, resolved to bring actions against him to recover back the amount of these duties, which they considered to have been illegally exacted. Accordingly, four actions were instituted against General Murray in 1768, in the Court of Common Pleas in England, for the recovery of the sums thus paid as duties upon the said commodities to the General's collector, as being money had and received to the use of the merchants. To these actions, the general plea that General Murray did not undertake to pay the said sums of money, being in no wise indebted for them, was pleaded. On the 10th February, 1768, his Majesty's Attorney General and the Solicitor General (Mr. Dunning) gave their opinion that the French duties might legally have been collected, but that the excess of the duties collected by General Murray above the French duties, ought to be refunded, and that the plaintiffs would not be able to recover more than that surplus or excess in their actions. This opinion afterwards proved to be correct, as the jury before which their actions were tried, gave verdicts for the excess of the duty on rum imposed by the defendant, above the duty upon the same commodity in the time of the French government. In consequence of

the event of these actions, by which it seemed to be generally admitted by the judge, jury and counsel concerned in them, that the King had a legal right to collect the French duties upon rum and other liquors imported into Quebec, the Lords of the Treasury resolved once more to demand payment of these from the merchants of Quebec, although they had failed in an action instituted for the same purpose in 1766, when the jury, contrary to the instructions of Mr. Chief Justice Hey, found a verdict for the defendant. They imagined that the authority of the Chief Justice of the Common Pleas and of the Special Jury of London merchants and of the Plaintiffs' Counsel who had consented to the verdicts above mentioned, might prevail upon the Quebec merchants to acknowledge the King's right to these duties. In this hope, they directed Thomas Mills, Esquire, the Receiver General at Quebec, to institute a new suit for the recovery of the duties which were claimed by his Majesty, as having theretofore belonged to the French King, and gave him the following instructions:—

“That in case a verdict should be obtained in favour of the crown, he should collect all the duties that appeared to have been collected by the French government in 1757. Except that on all British brandies and other spirits imported from Great Britain, and being the manufacture thereof, he should collect no more than one-half the duty levied by the French government in 1757, on brandies and spirits of the like quality imported into Canada. That he should forbear to collect any part of the duties which were levied by the French King in 1757, upon dry goods imported and exported, except the duties upon tobacco and snuff imported; his Majesty being graciously pleased to remit one moiety of the duties on British brandies and spirits, and the whole of the duties on dry goods imported and exported, except as before, as well in tenderness to his subjects in the Province of Quebec as in favour of the manufacturers of Great Britain.”

These instructions were received at Quebec about the end of October, 1768, and in consequence of them, public notice was given in the Quebec Gazette in February following, that

these duties on rum, brandy and wine, would be demanded upon all quantities of them imported in the ensuing spring and summer, according to the rates appointed by the last instructions from the Lords of the Treasury. None of the importers would consent to pay them, in consequence of which an information was fyled by the Attorney General of the Province (Mr. Mazeres,) against two of the principal importers, in which the defendants were charged with wickedly and craftily intending to deprive and defraud his Majesty of the duties aforesaid, and to diminish the revenue by importing into the port of Quebec, from certain of his Majesty's colonies in North America, twelve large casks of rum, &c., upon which a duty of £62 10s. sterling, was due to the King, and by causing the said rum to be landed without paying, or securing to be paid, to the use of his Majesty, the said duty, to the damage of the revenue of £500. To this information the general plea of *not guilty* was pleaded, and issue joined upon it. This cause was tried in July, 1769, at Quebec, by a special jury, before the Chief Justice. The facts of the case were clearly proved, and the only remaining doubt in the cause was concerning the above mentioned point of law—*whether or not, in consequence of the cession of the country, and the transfer of the sovereignty over it, from the French King to the King of Great Britain, these duties were become legally due to the King of Great Britain.*

The Chief Justice summed up the evidence, and exhorted the jury (as he had done the former one in October, 1766,) to bring in a special verdict, that the matter of law might be fully examined by himself and the other higher tribunals to which it might be removed by writ of error, and in the end rightly decided. But the jury (though they consisted of some of the most respectable inhabitants of Quebec) could not be persuaded, either by the exhortation of the Chief Justice of the province, or by the example of the jury of London merchants, who tried the actions against General Murray in February, 1768, and the concurrent opinions of the Chief Justice

of the Common Pleas in England, and the counsel for the plaintiffs in those actions, in favour of the King's right to the French duties, to find either a verdict for the Crown or a special verdict, but without much deliberation they found the defendants not guilty of the charges.

In this posture of things, Mr. Mazeres, the then Attorney General, concludes a paper, which would appear to have been submitted by him to the British Government, and of which the foregoing is an abstract, with the following judicious observation and recommendation:—

"I will venture to observe that in a claim of this kind, made by the Crown to an ancient duty, good policy requires that the justice and legality of it should not only be discernible to the acutest and most learned lawyer, but should be apparent and manifest to the understandings of common men, so that every body may immediately perceive and acknowledge it, and the Crown take possession of the duty, which is the object of the claim, with a general consent and approbation. Where this is not the case, as it evidently is not with respect to the duties above mentioned, it is better to resort to the legislative authority of the nation for a new law, either to revive the duties which are the objects of such disputed claim, or to impose such other duties and taxes as the people upon whom they are to be levied are easily able to bear, and the exigencies of Government make it necessary to levy upon them. And the only authority by which this can be done in the province of Quebec, where no assembly of the people has yet been assembled, seems to be that of the British Parliament. The authority of this supreme legislature and general representative body of the whole British empire, has not yet been disputed in this province: and from the loyal deportment of his Majesty's new Canadian subjects, there is reason to hope that every act of government that should be founded on that high authority will meet with a ready obedience on their part."

It will be recollected by our professional readers that a question bearing a strong analogy to the question in the previous case, arose in relation to the island of Grenada, one of the French ceded islands, and was very elaborately argued four several times before the King's Bench, after the above

proceedings which were had against General Murray: and that in March term, 1774, Lord Mansfield stated the case, and delivered the unanimous opinion of the court. The difference between the two cases lay in this, that in the case of General Murray the old duties, as well as certain new duties, imposed by his own authority, were levied, whereas in Grenada, duties equal in amount to the old French duties, levied in that island, were so levied under the authority of a proclamation of the King, under the great seal, previous to the convocation of any assembly, bearing date the 20th July, 1764. The Court of King's Bench held in this last case (*Hall vs. Campbell*, Cowper, 204) that the King had the power to legislate by proclamation for a conquered country, and that the duties in question were therefore rightly leviable under the aforesaid proclamation. There is reason to believe that this decision of the King's Bench did not meet with the approbation of the whole of Westminster Hall. Mr. Mazeres, about that time, in the *Canadian Freeholder*, examines with respectful freedom, the grounds of this decision; and the objections which he offers to the course of reasoning of Lord Mansfield, are sufficiently strong to have induced the editor of the last edition of the *State Trials* to subjoin them in a note to this case.\*—But Mr. Mazeres had previously stated strong reasons of doubt as to the continuation of the French duties in Canada, in the before mentioned paper, which was probably submitted to the British Government in 1768 or 1769, but was certainly in their possession in 1772, as we find it in a collection of public papers relating to the colony, intitled "*Quebec Commissions*," and published by him in London in the last mentioned year. The latter of the above alternatives, above recommended by Mr. Mazeres, was adopted in the statute under consideration.

That statute discontinues from and after the 5th day of

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\* *Howell's State Trials*—Vol. 20, p. 333.

April, 1775, all the duties which were imposed upon rum, brandy, eau de vie de liqueur within the said Province, and also of £3 per centum *ad valorem* on dry goods imported into or exported from the said Province, under the authority of His Most Christian Majesty, and enacts that in lieu and stead thereof there shall from and after the said 5th day of April, 1775, be raised, levied and collected and paid unto His Majesty for and upon the goods therein after mentioned, which should be imported or brought into any part of the said Province, over and above all other duties then payable in the said Province, the several rates and duties in the said act specified. It is provided in the second section of this statute,

"That all the monies that shall arise by the said duties, except the necessary charges of raising, collecting, levying, recovering, answering, paying and accounting for the same, shall be paid by the Collector of His Majesty's Customs into the hands of His Majesty's Receiver General in the said Province for the time being, and shall be applied in the first place in making a more certain and adequate provision towards defraying the expenses of the administration of justice, and of the support of civil government in the said Province; and that the Lord High Treasurer, or Commissioners of His Majesty's Treasury, or any three or more of them for the time being, shall be, and is or are hereby empowered from time to time, by any warrant or warrants under his or their hand or hands, to cause such money to be applied out of the said produce of the said duties towards defraying the said expenses; and that the residue of the said duties shall remain and be reserved in the hands of the said Receiver General for the future disposition of Parliament."

We will next direct our attention to the 18th of the King, which has been considered by some as repealing or modifying the above statute of the 14th of the King.

It has already been stated that the controversy between the parent State and the old British Colonies related to the claim set up by the British Parliament to impose such taxes, and to such amount as they thought fit, under their sole direction, within the Colonies, to be applied to Imperial purposes.



In the progress of this controversy, and to allay the well founded fears of the old Colonies, the English Parliament by the 18th Geo. III. enacted,

"That from and after the passing of that act, the King and Parliament of Great Britain would not impose any duty, tax, or assessment whatever, payable in any of His Majesty's Colonies, Provinces and Plantations in North America, and the West Indies, except only such duties as it might be expedient to impose for the regulation of commerce; the net produce of such duties to be always paid and applied to and for the use of the Colony, Province and Plantation in which the same shall be respectively levied, in such manner as other duties collected by the authority of the respective General Courts, or General Assemblies of such Colonies, Provinces or Plantations are ordinarily paid and applied. The preamble of this statute states the ends and objects of it in language intelligible to the meanest capacities. It is in the following words:—Whereas taxation by the Parliament of Great Britain for the purpose of raising a revenue in His Majesty's Colonies, Provinces and Plantations in North America, has been found by experience to occasion great uneasiness and disorders among His Majesty's faithful subjects, who may nevertheless be disposed to acknowledge the justice of contributing to the common defence of the Empire, provided such contribution should be raised under the authority of the General Court or General Assembly of each respective Colony, Province or Plantation; and whereas in order as well to remove the said uneasiness, and to quiet the minds of His Majesty's subjects who may be disposed to return to their allegiance as to restore the peace and welfare of all His Majesty's dominions, it is expedient to declare that the King and Parliament of Great Britain will not impose any duty, tax or assessment for the purpose of raising a revenue in any of the Colonies, Provinces or Plantations."

With this statute every man at all conversant with the history of the period in which it was passed is well acquainted, and at first sight I may have subjected myself to blame for the minuteness of this account of transactions so notorious, were it not that this statute has been confidently referred to, by men who ought to have known better, as operating a repeal of the general appropriation contained in the 14th Geo. III. c. 88, to the consideration of which I will proceed.

If either the statute itself or the clause in it which contains an appropriation of these duties for defraying the charge of the administration of justice, and the support of the civil government of this Province, be repealed, the repeal must have been operated by the 18th or else by the statute of the 31st of the late King, commonly called the constitutional act. From the scope and view of the 18th of the King, and its words as above given, it is manifest that no repeal was operated by it; and if as contended on the other side, such repeal were admitted to have been operated, it must, upon the principle of these reasons, have been a repeal *in toto*, and the duties would not be legally leviable. But the duties in point of fact have been received and applied to the purposes mentioned in the act, without any one having dreamed that they were illegal. All the statutes and proceedings of the Provincial Assembly from its first establishment downwards, relating to finance and revenue, as well in Upper as in Lower Canada, proceed upon the basis of the 14th of the King, being a subsisting law. And those who within these few years last past, have founded certain pretensions in relation to the monies levied under the 14th of the late King, or the 18th of the late King, seem not to have gone the length of asserting a full and absolute repeal of the former by the latter statute; but a modification of some kind or other, not very intelligible, of the general appropriation contained in the 14th of the King. Neither the text or the spirit of the 18th of the King justifies this assumption. The imposition and the appropriation of the duties are contained in the same statute, and cannot by any legitimate process of reasoning be severed.\* The question

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\* It has been well observed that in the above construction of the 14th Geo. III. c. 88, we are borne out by its plain meaning, by the confirmation of it by subsequent acts, by the opinion of the law officers of the crown, and by his Majesty's message to the Legislative Council, of the 28th November last, nor can any other construction be adopted without involving consequences the most inconsistent with any just and reasonable principle of interpretation; for if the appropriation of the duties levied under that act could be considered as abolished by the 18th Geo. III. c. 12, the

what the law is upon any given point, and the question whether it may be expedient or not to repeal or amend it, are questions manifestly of different import; and although the right determination of the latter requires a preliminary, full and accurate knowledge of the subject of the former, yet the converse of this proposition is not true. We must know what the law is before we can attempt to alter it; but the knowledge of what the law ought to be, does not in the slightest degree aid us in the enquiry into the fact of its existence. The one is theoretical and tentative; the other is historical, and appertains to the conduct of life and just practice. It might appear hardly necessary to state distinctions so obvious as these. But it is from confounding these two classes of questions that much obscurity has been thrown over the enquiry into the 14th of the King, which has so long been made a stalking horse to agitate the public mind.

The next head of enquiry is, whether the 14th of the King was repealed by the Constitutional Act in whole or in part.

It is not pretended that the 31st of the King contains any express words of repeal. If a repeal then has been effected,

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power to levy them must also be held to have been abrogated, and it would follow that all that has been collected since 1778, must, in such case, have been unlawfully taken; but the Legislative Council have uniformly held, that it is legally beyond the power of the Provincial Legislature to alter or apply these duties by any vote of theirs, nor can they be touched but by the same authority that imposed them; they have always proceeded upon that principle.

A further argument in confirmation of this principle is derived from a grant of £5000 sterling a year, having been permanently appropriated by the Provincial Act, 35th Geo. III. c. 9, towards further defraying the expences of the administration of justice, and of the support of the Civil Government in this Province. The terms of this Provincial Act furnish additional proof of the continued and present existence of the revenue and appropriation under the 14th Geo. III. and of the propriety of the construction for which the Legislative Council contend, since the Provincial Act uses the very words of the appropriation contained in the other and designates the grant as a further appropriation, or in addition to that made by the British Statute, for there was no other Provincial Act at that period for raising and applying revenue for these purposes, to which the further grant could be taken to refer.

*Appendix to Journals of Legislative Council of 1827-8-9.*

it must have been by necessary implication. In other words, because the provisos of the two statutes are so inconsistent, that they cannot, by any means, be made to stand together. —No such contradiction can be seen to exist between these two statutes, nor indeed any contradiction at all. It is notorious as a matter of fact, that they have stood together, and been acted upon from the time of the passing of the former statute down to this day. But it may be said that the general spirit of the Constitutional Act is contrary to the 14th of the King, and the general appropriation it contains. And this idea seems to be at the bottom of the vague and declamatory observations and resolutions of the individuals who have hazarded the assertion, that there is no subsisting appropriation of those monies. It would be easy to shew how little entitled to weight these notions are; the Constitutional Act has anticipated and determined this point in the 39d clause of that statute in these words:—

“And be it further enacted, That all laws, statutes and ordinances which shall be in force on the day to be fixed in the manner hereinafter directed for the commencement of this Act, within the said Provinces, or either of them, or in any part thereof respectively, shall remain and continue to be of the same force, authority and effect, in each of the said Provinces respectively, as if this act had not been made, and as if the said Province of *Quebec* had not been divided, except in so far as the same are expressly repealed or varied by this act, or in so far as the same shall or may be hereafter, by virtue of and under the authority of this act, be repealed or varied by his Majesty, his heirs or successors, by and with the advice and consent of the Legislative Councils and Assemblies of the said Provinces respectively, or in so far as the same may be repealed or varied by such temporary laws or ordinances as may be made in the manner hereinafter specified.”

Here then the 14th of the King (being one of those contained in the above general words) forms an integral part of the constitution, as settled by that statute, or a condition accompanying the grant of the constitution. Thus we see that the 14th of the King is a part of the subsisting law of Cana-

da, and as such like every other law binding upon the three branches of the Legislature, in common with the rest of the King's subjects, until it shall be by competent authority repealed.

## No. XX.

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FINANCES.

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THE SUBJECT RESUMED.

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*Statutes of the 14th and 18th of the King.*

Although much has been spoken and written respecting the conduct of the Finances of this Province, there has been much more of declamation, on the one side and on the other, than of sober reason; yet, in any inquiry into a subject like this, facts are to be ascertained with the most minute accuracy, and there seems little room for the exaggeration of passion or the ebullition of party feeling. The controversies on this head may be considered as having their date from 1818. It is necessary for us, however, to cast a rapid glance over the financial affairs of the colony, from the period of the passing of the 14th of the King, which statute formed the subject of our last paper, down to the year 1818. We shall resume the subject at this last period, and bring our enquiry down to the present day.

It is to be observed, then, that in the whole of this tract of time, this colony has been treated with unexampled liberality by the parent state; and this will be fully seen upon instituting a comparison between the conduct of other European States to their colonies, and of Great Britain herself towards her old colonies, and the conduct which has been pursued by her towards ourselves.

The Spanish and Portuguese settlements, after paying all



their internal expences, afforded a large revenue to the crown. The administration of the French islands was all provided for by taxes in the colonies ; which, without falling heavy on the planters, left a considerable free revenue : and the duties levied upon imported produce, (and altogether founded on the colonial monopoly) yielded a great balance, after defraying all the expences of collection. The whole expences of their American colonies in the time of peace did not exceed the revenue ; and a great part of the colonial surplus was expended in public works of mere ornament or magnificence. The Exchequer of Great Britain, after paying out of the colonial fund all that part of the civil administration in the West Indies, which the colonies themselves are not obliged to pay directly, derives a considerable clear income ; and part of the expences of the army are also defrayed by the islands. Those settlements are, many of them, in their infancy—all of them susceptible of great improvement—and likely, without any increase of expence to Great Britain, to afford her an additional revenue. They have already raised and paid a large force, from the great bulk of the population, the negroes ; and in no part of the empire does the militia fall so generally upon the subjects, at so little expence to Government ; every man fit to bear arms is attached to that body ; and even in times of actual service, no pay whatever is received. The settlements both of England and Holland, in the East Indies, subject to the government of exclusive companies, cost nothing to the mother country, either for the civil or military supplies. On the contrary, those companies pay a premium from time to time for the renewal of their exclusive charters ; this is, strictly speaking, a clear revenue to the state. The same remark extends to the Dutch colonies in the West Indies and South America.

The old colonies of North America, besides defraying the whole expences of their internal administration, were enabled, from their situation, to render very active assistance to the mother country, upon several occasions not peculiarly inter-

esting to themselves. They uniformly asserted that they would never refuse contributions, even for the purposes strictly imperial, provided these were constitutionally demanded. Nor did they stop at these professions of zeal. During the seven years war, they raised and paid twenty-five thousand men, who, upon more than one occasion, saved the British army. They assisted in the conquest of Nova Scotia, and effected the capture of Louisburg. In the war 1739, when their population and resources were very trifling, they sent three thousand men to join the expedition to Carthage, and a detachment of New England troops in the same war, took Cape Breton, under the command of General Pepperel. The privateers fitted out in the different ports of America, and belonging to the colonies, were, even at that time, both in numbers of men and guns, more powerful than the whole British navy, at the era of its victory over the Spanish armada.\* Many parts of the colonies have, at all times, furnished large supplies to the naval force that was destined to protect them. The fisheries of New England, in particular, used to contribute a vast number of excellent seamen to the British navy. At the beginning of the troubles in 1775, the united colonies, besides maintaining their whole internal policy, were willing to offer a clear contribution of a hundred thousand pounds sterling *per annum*, for one hundred years, towards a sinking fund, for extinguishing the national debt of the mother country, on condition of being treated like the other parts of the British empire. The treatment of the colonial agents by the English Government, prevented this memorable proposal from being formally made, but a state paper is still on record, drawn up by congress, and distinctly expressive of their sentiments to the above effect.†

Let us now turn to the Financial History of this colony

\* Brugham, Colonial Policy, vol. 1, p. 136—See also the work cited by him.

† Franklin, Thoughts on the peopling of new countries, sect. 22—also Franklin, his miscellaneous pieces, p. 357.

during the aforesaid period. The civil expenditure of Lower Canada, from the cession of the country down to the year 1818, was partially at the charge, and exclusively under the controul of the Government of Great Britain, and its officers in the province. A portion of the supplies was raised within the province, under permanent acts of the Parliament of Great Britain, and since the year 1793, under permanent and temporary acts of the Legislature of the province. To these were added his Majesty's casual and territorial revenue, and the deficiency was supplied out of his Majesty's military chest. In 1793, Lord Dorchester, then Governor-in-Chief, in his speech delivered at the opening of the session on the 11th November, states as follows:—

“The general expenditure is very great, but it cannot all be placed to the Provincial account; such parts of it as more particularly relate to that head, I am not at this time enabled to bring forward; I can only say it greatly exceeds the provincial fund; yet it is not my intention at present to apply to you for aid; that you may have more time to consider by what means the provincial revenue may be rendered more productive; in hopes, nevertheless, that Great Britain will, in the mean while, continue her generous assistance to this colony, and defray such surplus expences as are absolutely necessary to its prosperity.”

In 1794, when the first statement of the expenditure was laid before the House of Assembly, the total amount of warrants issued by the Governor or the Receiver General, was £23,769 currency. The receipt was £5,854 7s. 5d. On the 16th February, 1795, his Excellency Lord Dorchester, Governor-in-Chief, again laid before the Assembly the public accounts. It was in this year that the first appropriation, not exclusively for the expences of the Legislature, was made by the House of Assembly, consisting of several special appropriations, and of a permanent appropriation of five thousand pounds *per annum* for the administration of justice, and the support of the civil government. In the following year the expenditure was £27,225 currency, and Lord Dorchester, in his

message to the Assembly of the 8th March, 1796, after stating that the balance of the expenditure exceeded the provincial revenue to the amount of £12,718 6s. 7d., and referring to the British acts 25th Ch. 2d c. 7—6th Geo. II. c. 13—4th Geo. III. c. 15, and 6th Geo. III. 52, observes,

“But supposing these, as well as the other revenues collected within the province, had been in the first instance appropriated to defraying the expences thereof, the expenditure has still exceeded the receipts in the sum of £11,585 3s. 6d. currency.”

The total of the general expenditure and of the receipts, from the year 1794 to the year 1818, both inclusive, according to a statement drawn up from the annual accounts in the journals of the Assembly, by order of the House, was—

Expenditure,	Cy. £1,756,860 12 4
Receipts,	1,474,527 1 10
	<hr/>
Balance,	£282,333 10 6

The highest expenditure throughout the same period, according to the above mentioned statement, was in 1813, when a large proportion of the provincial fund was applied in support of the war, under the appropriations made by the Provincial Legislature, viz:

	Expenditure, £206,800 5 9
The highest receipt was in the following	
year, viz:	203,656 8 11
In 1810, according to the same statement,	
the expenditure was	58,564 14 3
The Receipts,	70,398 13 7
	<hr/>
Surplus of revenue beyond the expenditure	£11,833 19 4

It was on the 10th February, in the year 1810, that the Assembly resolved,

That this province is at present able to pay all the civil expences of its Government.

2dly.—That this House ought to vote during this Session, the necessary sums for defraying the civil expences of the Government of this province.

3dly.—That this House will vote in this session the necessary sums for defraying the civil expences of the Government of this province.

And on the 13th of the same month an humble address was voted by the Assembly to his Majesty and both Houses of Parliament, stating,

That this House had engaged, in the course of the present session of the Legislature, to pay the civil expenditure of the provincial government, which has hitherto been chiefly defrayed by his Majesty.

On the 7th January, 1818, his Excellency Sir John Coape Sherbrooke, in his speech at the opening of the session, communicated to both Houses “the commands of his Royal Highness the Prince Regent, to call upon the Provincial Legislature to vote the sums necessary for the ordinary annual expenditure of the province;” and at the same time addressing the House of Assembly, he added: “In pursuance of these directions which I have received from his Majesty’s Government, I shall order to be laid before you an estimate of the sums which will be required to defray the expences of the civil Government of the province, during the year 1818, and I desire you, in his Majesty’s name, to provide, in a constitutional manner, the supplies which will be necessary for the purpose;” and his Excellency added, “I anticipate with confidence a continuance of that loyalty and zeal for his Majesty’s service on your part, which I have hitherto experienced, and a ready execution of the offer which you made on a former occasion, to defray the expences of his Majesty’s Provincial Government, with a liberality that did you honor.”\*

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\* This statement is taken from the Journals of the Assembly, Vol. 29-30, Appendix R.—being the first Report on the Civil List.

**We shall next proceed to complete the whole of the subject stated in the opening of this paper by examining the proceedings had by the Imperial Government, and by the Provincial Legislature, in relation to the revenue and expenditure of the colony, from the day that the above message was received down to the close of the session of the Provincial Legislature now under review.**



No. XXI.

## FINANCES.

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UTRUM Chimera bombinans in vacuo possit comedere secundas intentiones.

UTRUM, la froidure hybernale des Antipodes, passant en ligne orthogonale par l'homogénéité solidité du centre, pourroit par une douce antiperistasis eschauffer la superficielle connexité de nos talons. — RABELAIS.

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*14th and 18th of the King.*

## THE SUBJECT RESUMED AND CONCLUDED.

I pass over the proceedings had in the Assembly from the delivery of the Message adverted to in the preceding number, for the present, to come to the consideration of the Report of the Committee of Public Accounts, in the Session of 1823. The intermediate proceedings will find a more proper place in the following number,—and I shall here confine myself exclusively to that part of the report in question which relates to the statutes at the head of this number.

In the preceding number I have submitted the reasons which induced me to believe that the 14th of the King is a subsisting law, by which all his Majesty's subjects are bound. The report in question is the first official document that I am acquainted with which enunciates a contrary doctrine. This report having been followed by various resolutions of the Assembly, in accordance therewith, and the same continuing to be adhered to by the Assembly, it is material to enquire into the grounds and reasons which have been stated for them, to the end that a right judgment may be come to there-

upon, as well here as elsewhere ; and it would seem most consistent with fairness and a just investigation of the truth that these grounds and reasons should be given in the words of the propounders thereof ; they are thus stated in the report in question :—

“The session of 1818 forms a remarkable epoch in the annals of the Provincial Legislature, and more especially of the House of Assembly ; in that session the house began to possess, in their full extent, the rights which they might exercise ; in that year his Majesty’s representative in this province, Sir John Coape Sherbrooke, informed this house that it had pleased His Majesty to grant us, with confidence, what we with liberality had asked in 1810—that is to say, to supply the necessary sums for defraying all the civil expenses of the administration of the government of this province.”

Your committee deem it proper to give in this place the part of his Excellency’s speech which relates to that matter.

“I have received the commands of his Royal Highness the Prince Regent, to call upon the Provincial Legislature to vote the sums necessary for the ordinary annual expenditure of the province. These commands will, I am persuaded, receive from you that weighty consideration which their importance deserves.”

When addressing the House of Assembly, his Excellency added :—

“In pursuance of these directions which I have received from his Majesty’s Government, I shall order to be laid before you an estimate of the sums which will be required to defray the expenses of the civil government of the province, during the year 1818. I desire you, in His Majesty’s name, to provide, in a constitutional manner, the supplies which will be necessary for this purpose. I shall also order to be laid before you the accounts of the public revenue and expenditure for the last twelve months, by which you will be enabled to ascertain the means of supply that are at your disposal ; and I anticipate, with confidence, a continuance of that loyalty and zeal for his Majesty’s service, on your part, which I have hitherto experienced, and a ready execution of the offer which you made on a former occasion, to defray the expenses of his Majesty’s Provincial Government with a liberality which did you honour.”

"Thus your committee perceive that the House of Assembly had offered, in 1810, to charge itself with all the civil expenses of the government, without exception, and without restriction; and they also find, from the speech above cited, that this offer was accepted in its full extent. They perceive also, that in consequence of this new order of things, the House of Assembly was forthwith called upon to provide for all the civil expenses of the Government, without exception and without restriction, and they also find from the speech above cited, that this offer was accepted in its full extent. They perceive also, that in consequence of this new order of things the House of Assembly was forthwith called upon to provide for all the civil expenses of the Government, which in fact they did so far as depended on them.

"The same principles, and a demand altogether similar, are found in the speech of his Grace the Duke of Richmond, at the opening of the session in 1819, as also his message of the 3d March, in the same year; by which his Grace calls upon this house to make sufficient appropriations for defraying the regular and contingent expenses of the province.

"If your committee have entered into these details, it is only on account of the difficulties which, for some time past, have arisen in this province. It has been pretended that the Provincial Legislature, charged with all the expenses of the civil government of this province, had not at its disposal the whole revenue of the province to meet those expenses, and especially that the revenue arising from the act of the 14th Geo. III. c. 88, remained at the disposal of his Majesty's Executive Government in this province, as well as the casual and territorial revenues.

"Your Committee will rather examine than refute this opinion, against which argument and facts equally militate. In fact, the act of the 14th Geo. III. c. 88, among other things provided, 'a fund towards defraying the charges of the administration of justice and support of the civil government within the province of Quebec,' at a time when no other means for defraying those necessary expenses, were established. But in charging the Provincial Legislature in 1818 with the payment of all the expenses of the civil government of the province, without exception, doubtless its entire means must have been placed in the hands of the Legislature. In fact, the Executive Government being, by this new order of things, exonerated from the charge of defraying the expenses of the administration of justice, and the support of the Civil Government, has no longer any pretext for levying and disposing of the imposts specially established for defraying the expenses

of the administration of justice and the support of the Civil Government.

"It may here further be remarked, that it is only since the year 1818 that the public accounts, annually laid before the Legislature, by order of the several Governors of this province, have invariably mingled his Majesty's casual and territorial revenue, as also the income arising from the 14th Geo. III. c. 88, with the revenue levied under the general acts of the Provincial Legislature, in order to form one mass expressly designated in those accounts, as being at the disposal of the Legislature.

"Your committee think it proper here to dwell upon the message of his Grace the Duke of Richmond, dated the 3d March, 1819, already alluded to. His Grace informs the House that he had directed to be laid before the House of Assembly, estimates of the *regular and contingent expences* of the province, for the year commencing the 1st November, 1818, and ending the 31st October, 1819, inclusively, in full confidence that the House will provide by sufficient appropriations for the same. His Grace adds that the amount of these estimates may be considered as the sum which will be annually necessary for the support of the civil list; subject, nevertheless, from time to time, to such diminution or augmentation as the circumstances of the times may require, and the wisdom of the Legislature shall deem expedient.

"Your committee do not think it possible to reconcile the pretension of permanent appropriations foreign to the Provincial Legislature, with the tenor and letter of that message. But could any doubt in this respect remain, your committee conceive that it must forever disappear before the solemn judgment of a competent tribunal. There exists an act of the Provincial Parliament which decides the question. This act is the 58th Geo. III. c. 4. It is therein enacted, that Upper Canada shall receive one fifth of the revenue raised by virtue of the act of the 14th Geo. III. c. 88. No one surely will venture to accuse his Excellency Sir John Coape Sherbrooke, then Governor of this province, of having on that occasion compromised the rights of the crown, by giving the royal assent to that bill, which acknowledged in the Provincial Legislature the right of disposing of the revenue arising from the act of the 14th Geo. III. c. 88; and the rather, as his Majesty has never signified his disallowance of that Provincial act. It might, at the most, be pretended that the Provincial Legislature can only appropriate the monies levied by virtue of that act, to those purposes for which it was passed, as also the five thousand pounds sterling voted by the

act of the 35th Geo. III. cap. 9, Sect. 17; but it is not on that account the less true, that the revenue arising from them cannot be applied without their concurrence.

"The act of the 14th Geo. III. c. 88, embraces nearly the whole of the expences of the Civil Government, the details whereof must be superintended by the Provincial Legislature, more particularly since it has been especially charged therewith; otherwise what means the formal offer of the House of Assembly in 1810, to charge itself with the whole expense of the Civil Government, then so violently opposed, and the acknowledgment of that important right in favour of the Provincial Legislature by his Majesty, after a consideration of eight years? would the unimportant matter of *local establishments* (a term then unknown in our official relations with the government, and which would in vain be sought for in the speech of Sir John C. Sherbrooke, and in that of his Grace the Duke of Richmond,) have merited the refusal experienced by this House in 1810, after such consideration on the part of his Majesty's Ministers, and the gratifying assurance of his Royal Highness the Prince Regent's satisfaction with what he deigns to call our "*Liberality*?"

"Another proof occurs, in support of what your committee have just advanced, demonstrating that all the revenues of the province are at the disposal of the Legislature. It is as positive as it is recent; it is contained in an official document laid before this House on the 7th instant, which signifies to this house the approbation of his Excellency the Earl of Dalhousie, Governor-in-Chief of this Province, respecting a petition presented to this House for the remission of certain dues of *Quint*. This matter, then, is also within the competence of the Legislature.—Thus the opinion, that the Provincial Legislature alone has the right of disposing of all the revenues raised in this province, rests upon public law—upon the unvarying and uniform interpretation of this House—upon the private and public acts of the Governors of this province since 1818, and lastly, upon a final judgment in the last resort, a solemn act of Parliament.

"Having considered the situation of the Provincial Legislature since 1818, in consequence of his Majesty's instructions signified to the Provincial Parliament by his Excellency Sir John Coape Sherbrooke, your committee deem it their duty to examine how far that situation appears to have been altered by the message of his Excellency the Earl of Dalhousie, Governor-in-Chief of this Province, bearing date the 6th February, 18-2. His Excellency Sir John Coape Sherbrooke, at the opening of the session in 1818, acknowledges no other

expenditure in this province than that which is necessary for the support of the Civil Government, and calls upon the Provincial Legislature to make provision for the same without restriction. His Excellency the Earl of Dalhousie, in his message of the 6th February, establishes two species of expenses, distinct and separate—one "in support of his Majesty's Civil Government, and of the administration of Justice," with which his Excellency declares himself charged, to the exclusion of the Legislature, and the other, to defray "*such local establishments* and objects of public charge, as form no part of his Majesty's Civil Government, and are not connected with the administration of Justice." The latter portion is left to the Provincial Parliament.

"Having applied to this Message an attention the more serious, inasmuch as that official document puts in question the dearest rights of the Provincial Legislature, and of the House of Assembly more especially; and inasmuch as his Excellency has already several times referred the House of Assembly to that Message, your committee are of opinion,

"That the House of Assembly cannot in any manner acknowledge the principles laid down in that Message.

"That they cannot acknowledge the distinction which is therein made, between the expenses of the Civil Government and those of local objects, foreign to the Civil Government.

"That they cannot acknowledge in the Governor in Chief the right of applying to objects which he declares foreign to the Civil Government of this province, and to the administration of Justice, the monies specially destined to these objects.

"That they cannot acknowledge in the Governor in Chief the right of applying any portion of the monies levied in this Province, and destined for defraying the expenses of the administration of Justice, and of the Civil Government of this province, without being thereunto authorized by the Provincial Legislature."

I mean not to be hypercritical when I entreat the attention of my readers to the exceeding poverty, nay inanity of language which the above extract exhibits, not that what is called fine writing ought to find its place in a document like that, but there ought to be severe accuracy of language, without which there can be no accuracy of thinking or of judging upon subjects of this nature.

To begin with the first paragraph, we are informed in it that the session of 1818 formed a remarkable epoch in the



annals of the Provincial Legislature, and more especially in the House of Assembly, for "That in that session the house began to possess in their full extent the rights which they might exercise." *Euge!* This is a remarkable epoch indeed to be inscribed *inter fasta*, the house came to be vested with the rights which they might exercise. What rights were these which they might exercise? does not the idea of a right involve always in it the power of exercising it?—This is a bad omen—stumbling at the threshold.—The chairman of the committee proceeds:—In that year his Majesty's representative in this province—Did he not know that his Majesty has no representative *per eminentiam* here; and why was it that an expression fitted only for the adulators to be found in the anti-chambers of the Castle of St. Lewis appeared in a document like this?

The second paragraph is altogether unexceptionable, it being exclusively occupied by an extract from a speech of Sir John Coape Sherbrooke.

In the 3d paragraph the writer perceives two things, one in each of the sentences whereof it is composed. The first is the offer in 1810, and the 2d is the acceptance of that offer in the speech of Sir John Sherbrooke, of which he has given us the extract: the subject before him was not one of perception but of reasoning and judgment.

The 4th clause it will be seen is confined to a reference to the speech of his Grace the Duke of Richmond at the opening of the Session in 1819.—The worthy Chairman next accounts for his entering into these details, and we are now informed that "It has been pretended that the Provincial Legislature, charged with all the expenses of the Civil Government of this province, had not at its disposal the whole revenue of the province to meet those expenses, and especially that the revenue arising from the act of the 14 Geo. III. c. 88, remained at the disposal of his Majesty's Executive Government in this province as well as the casual and territorial revenues."—Pretended! Accuracy of language is desirable—

accuracy as to fact is indispensable ; it never was pretended that those monies levied under the 14th of the King were otherwise disposable than by his Majesty. We here at last seem to approach the knot, and let us see how he untwists it. "Your committee" quoth he "will rather examine than refute this opinion against which argument and facts equally militate." *Bonum facile dixerts* the rest of the sentence, I fear, will not apply. He will not refute, kind soul ! he will only examine forsooth, and what is he going to examine ? why the aforesaid opinion. But if it be not for the purpose either of establishing it, or of refuting it, what is the end and object of his examination ? If it be an opinion against which argument and facts equally militate, the duty of the committee was to shew that argument and those facts ; and if the statement of the committee as to these last were correct, then that argument and those facts would amount to a refutation of such opinion ; but why proceed with this. The writer of this paper had, in the course of his reading, met with some *antithesis* or other, and not being particularly abundant or redundant of words or ideas either, had evidently made his first great effort at composition in this paper.

I vainly look for any argument in the five following clauses. —The sixth is to this effect, "Thus the opinion that the Provincial Legislature alone has the right of disposing of all the revenues raised in this province rests upon public law, upon the unvarying and uniform interpretation of this House, upon the private and public acts of the Governors of this province since 1818, and lastly upon a final judgment in the last resort, a solemn act of Parliament." The remaining clauses relate exclusively to the Message of his Excellency the Earl of Dalhousie, bearing date the 6th February, 1822, distinguishing the expenses of the Civil Government of the province generally, from the expenses of local establishments, and the resolutions of the house upon that Message ; but the report very modestly abstain from offering any argument or facts which "militate" against his Message. I entreat excuse

for the homeliness of the expression ; but it is quite impossible to argue that *down* which has never been argued *up* ; it is impossible to apply the standard of reason to that which has none. No man in his senses would attempt to measure any given interval of time with a foot rule ; but the facts adverted to in this report being a part of those which I have already said I would examine in my next number, I will take occasion to make such observations upon them in their order as they arise, closing here the subject of the report of 1823, upon the 14th of the King.

## No. XXII.

## FINANCES.

## THE SUBJECT CONTINUED.

## 2 a — 3 a = — a ———SIMPLE EQUATIONS.

Between the interval of time which elapsed from the cession of Canada in 1763 to the year 1818, Great Britain besides supporting the Military Establishments within the Colony, and the Protestant Clergy, expended large sums of money in aid of the civil expenditure of the province.

The Colony relieved from all the expenditures incident to external defence and security from foreign violence and aggression, which press so heavily upon independent states, had advanced so rapidly in wealth, as to be able in 1810, to pay the whole of the expenditures of its Civil Government. The official men, who in Colonies constitute a peculiar class, having been entirely uncontrolled, had obtained a degree of power which overshadowed all the other classes of society; and the main object of the highly patriotic individual who introduced this measure originally in 1810, the late Honourable Mr. Justice Bedard, then advocate at the Bar of Quebec, was to obtain a check upon the official class. As a reward for this patriotic effort, this man distinguished as he was for ability, for singleness of heart, and for a devoted attachment to constitutional principles, was, with some of his supporters, lodged in the common gaol for the District of Quebec, under the authority of an act for which he himself

had voted, granting extraordinary power to the Executive, for the purpose of repressing sedition ; an act introduced in the first instance, amidst the terrors of the French Revolution, and continued as it were by routine after its necessity had ceased. I would willingly weave a garland to place upon the stone which presses upon the mortal remains of one whom alive I loved, and whose memory I shall ever revere ; but it would not be fitting to cast it amidst the thorns and brambles of controversy ; I must leave the theme and return to my subject.

The proposal lay dormant till 1817, when the attention of His Majesty's Government was particularly directed to retrenchment, and it was in consequence of orders then given, that his Excellency Sir John Coape Sherbrooke made the communication to the Legislature contained in my last number. The words "in a constitutional manner" used in the Message of His Excellency have afforded an abundant source of controversy, and the opinion on this subject may be divided into four heads.

First—That the appropriations as well for the officers of Government, and the contingent expenses thereof, as the appropriation for local objects and establishments should be permanent.

2d.—That they should be voted during the life of the King.

3d.—That they should be voted annually.

4th—That a distinction should be made between the above two classes of expenditure, and that the salaries of the officers, &c. should be voted permanently or during the life of the King, and that objects of mere local interest should be covered by annual votes.

It is not my intention to go through the details of all the squabbling and controversy upon this point, between 1818 and the opening of the Session of 1831. I will try to examine the subject without any reference to parties, as far as I am myself sensible of any partiality or bias on either side.

An abundant source of error as to all Colonial affairs, is

too servile a reference to the proceedings of the Government in England, as a model, without bearing in mind the marked difference which exists between the society there and here. We do so in England say many people, and thence infer, *per saltum*, that the same thing ought to be done in this remote Colony. Now, there are so many points of difference between the condition of a Colony and that of a Metropolitan State, that the legitimate inference is exactly the other way, if it be made *per saltum* at all. They do so in England, it is then probable that the same thing will not answer here.

Let us come somewhat closer to the subject in hand. England is a metropolitan and independent State. Canada is a Colony dependent upon England. There are then, certain conditions growing out of that relation, the non-existence whereof would imply the destruction of the relation. One of these is, that it shall not be in the power of the Colony, so long as she remains a Colony, legally to break the link that binds her to the parent State, nor, which is the same proposition in another form, can the Metropolitan State put herself or be put into such a position that she cannot maintain her supremacy without violating the law. The officers of the Civil Government of the Colony are, at once, officers of the Empire and officers of the Colony: they require, therefore, to be placed in a degree of independence of the Colonial authorities, which is not requisite or advisable in a Metropolitan State. Their dependence should be alone on the Metropolitan State, subject, however, to trial and judgment within the Colony for any offences there committed by them in the discharge of their public duties. If their salaries depended upon annual votes within the Colony, they would cease to be officers of the Empire, and become exclusively, officers of the Colony. Thus the Provincial Legislature comes to have the power of withholding some or all of these salaries, that is, of depriving the Metropolitan State, of all officers within its Colony, indeed of legitimately annihilating supremacy. It may be said that this would never be done. In considering political rights we should measure the pow-



er, not weigh future contingencies of facts. Again, supposing the contingency to happen, the parent State is driven to one of three measures; either to pay its public Colonial officers out of the general coffers of the Empire, or to apply the public revenues of the Colony to the purpose, without any law to sanction it, or to pass a law in the Imperial Legislature making the required appropriation.

And as to this contingency never happening, let it be recollected that the Colonial Legislature pursued a measure of a still more outrageous character when they refused to renew any of the temporary acts imposing duties within the Colony, and drove the Imperial Parliament to the necessity of continuing the then and now subsisting duties by passing the act commonly called the Canada Trade Act (3 Geo. IV. c. 119.)

Is it not manifest, that granting an exclusive power to the Colonial Legislature of appropriating all the sums necessary for the Civil expenditure of the Colony gives them absolute control over the officers of the Empire and of the Colony, makes the latter, exclusively, officers of the Colony, and annihilates potentially if not actually, the *imperium* of Great Britain over her Colony?

The error into which men on this and on the other side of the water have fallen upon this subject, has arisen from their looking at the benefits (not unmixed) which have arisen from the power of the Commons over the public purse; but observe the violence of this check; see the convulsions it produced before it was established.

In a Colony this is a contradiction in terms; a checking power must always be greater than the power checked; it involves nothing less than the absurdity, that a smaller power should counteract a greater one; then besides, it is supported by no reasons of expediency if it were possible. There is nothing in a colony to prevent or restrain the violence of popular faction. In independent States, the fear of external violence operates as a check; men feel that, without contributing some portion of their property to the support of armies and navies, the

whole might be taken from them by foreign invaders. So too, in old countries, such is the distinction of ranks and inequality of fortune, that the paralysis of the powers of government for one day, would in most of them create vast destruction of life and of property: that neither of these conditions obtain in Colonies, is any proof in point of fact wanting? When the Legislature refused to renew temporary acts of subsidy, were there any apprehensions felt in any quarter, or was any deep sensation excited in any breasts, save perhaps, in those of the persons holding office, who saw their means of subsistence jeopardized by this measure? What would be the effect in England or in France, of a refusal on the part of the representative body to continue the subsisting subsidies, and of its being known that the government would at a given period be left naked and without resources? Again, the controul in these old countries is expedient, because the persons to be controlled are the highest administrative officers of the Empire, who may be interested in levying and in spending larger sums of money than are necessary or supportable, and in screening members of their own body from punishment for abuses. But the high administrative officers of the Metropolitan Government never can have an interest in screening a public officer from punishment in the Colonies; all that they could fail in would be the want of knowledge of the delinquency; but this could not exist if the proper tribunal were provided within the Colony for the trial of public delinquents. It is further to be observed that, in the small societies whereof Colonies are composed, men in official power come into more close contact than with their fellow subjects in the large States of Europe. The interests are smaller it is true, but the acrimony is not less. A village society when compared with that of a metropolis, forms the exact counterpart of a Colony and of a metropolitan state. I apprehend, therefore, that the necessary expenses for the payment of all the officers of government, should be provided for out of a permanent fund, and their allowances should be fixed and settled to be

reduced only, *causa cognita*, upon an address of the two branches of the Legislature, and to be augmented only by an act of the Provincial Legislature.

The following passage from a very enlightened and judicious writer, shews that this policy is well understood and practised even in the Republics of North America :—

“The support of the President is secured by a provision in the constitution, which declares, that he shall, at stated times, receive for his services a compensation that shall neither be increased nor diminished, during the period for which he shall have been elected ; and that he shall not receive, within that time, any other emolument from the United States, or any of them. This provision is intended to preserve the due independence and energy of the Executive Department. It would be in vain to declare that the different departments of Government should be kept separate and distinct, while the Legislature possessed a discretionary controul over the salaries of the executive and judicial officers. This would be to disregard the voice of experience, and the operation of invariable principles of human conduct. A controul over a man's living is, in most cases, a controul over his actions. The constitution of Virginia considered it as a fundamental axiom of government, that the three great and primary departments should be kept separate and distinct ; so that neither of them exercised the powers properly belonging to the other. But without taking any precautions to preserve this principle in practice, it made the Governor dependent on the Legislature for his annual existence and his annual support. The result was, as Mr. Jefferson has told us, that during the whole session of the Legislature, the direction of the executive was habitual and familiar. The constitution of Massachusetts discovered more wisdom, and it set the first example in this country, of a constitutional provision for the support of the executive magistrate, by declaring that the Governor should have a salary of a fixed and permanent value, amply sufficient and established by standing laws. Those state constitutions which have been made or amended since the establishment of the constitution of the United States, have generally followed the example which it has happily set them, in this and in many other instances ; and we may consider it as one of the most signal blessings bestowed on this country, that we have such a wise fabric of government as the constitution of the United States constantly before our eyes, not only for our national

protection and obedience, but for our local imitation and example."—*Kent's Commentaries on American Law*, I. p. 262.

But as to every other expenditure within the colony, they are evidently purely local; and, with all the internal concerns of the colony, save where they touch Imperial interests, should be left exclusively to the respective colonial Legislatures; and this is the distinction stated, and I think rightly stated, (notwithstanding the resolutions of the committee of 1822, to be found in the preceding number) by Lord Dalhousie in his message to the House.

If I am right in this view of the subject, the controul of so much of the Provincial Revenue as is necessary for the maintenance of the government, ought not to be given to the Provincial Legislature, if it be actually, or possibly might become an instrument of political power.

The next enquiry is, whether it would be so used, or whether it would be used for real purposes of economy, or for relieving the people from an unnecessary burden of taxation.

In the first place, exempted as we are from all the expences of external defence, our taxes are exceedingly light, and are, almost exclusively, derived from imposts upon goods imported into the province.

Our neighbours in the United States do not enjoy this exemption. Let this tariff be compared with the tariff of the United States. Look at the wasteful expenditure of money in the contingent expences of the Provincial Legislature. The expenditure for printing alone during the session of 1831, at one of the establishments for the Assembly, not for the whole Legislature, cannot amount to less than from £5500 to £6000,\* and

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\* The delay which has occurred in printing these papers enables us to verify this fact. The printing for the Session of 1831 at the before mentioned establishment amounts to £5060, to which is to be added a sum of from £700 to £800 for the journals of that year, which have not yet appeared—March, 1832.

Yet the Assembly refused, from motives of economy and from paucity of means, (these were, doubtless, the motives, because they were the motives that were assigned,) a grant of the moderate sum of three thousand

this is only one of the presses employed, and does not comprise the expense of printing the laws, or of the printing for the Legislative Council, nor indeed the whole of the expences of the Assembly, another press being occasionally, though rarely employed by that body.

Since 1814, inclusive, there has been expended within the colony for internal communications, a sum exceeding nearly half a million of money. Besides this, in 1817, the sum of £45,000 was appropriated for the relief of certain parishes, and for the purchase of seed wheat for such of them as were in distress.

The Speaker of each of the Houses has £1000 a year allowed him.

No measures have ever been taken to examine these accounts by either branches of the Legislature, though, if proper measures for this purpose had been proposed they could not have met with obstructions in either of the other branches of the Legislature. What interest could either of the branches of the Legislature have in screening the commissioners selected in different parts of the province? but this would have been a work of some labour, and would not have approximated the labourers to office. For where your treasure is, there will your heart be also.

The hearts of patriots lie in the civil list; if any one doubts it, let him observe the almost exclusive attention which has been given to this object. I ought to have given Lord Dalhousie credit in its proper place, for having been the first to see the distinction between the expenditure for the civil list, and the expenditure for local objects.

Passing over the squabblings respecting the civil list from

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two hundred and some pounds for internal communications of such great urgency that the standing committee of internal communications had recommended them after a patient and laborious investigation, occupying nearly the whole of the session, and requiring on their part the examination and consideration of the official reports of all the commissioners for all the roads and other internal communications appointed to carry into effect the large appropriations of 1830.

1817 to 1831, and referring such of my readers as are fond of dry reading, to the Journals of the Assembly from year to year, I, at once, come down to the proceedings of this session.

On the 14th March, 1831, the House of Assembly after the entries of the Journals of the 10th Feb. 1829, on the order of the day for the House in Committee of the whole House on the estimate for the current year had been read, came to the following resolution :—

“ That this House adheres to and repeats the declarations in the said entry and in the entries above mentioned, and proceeds only on the report of the Committee of the whole House to whom was referred the estimate of the expences of the current year, under the said declarations and resolves, and more particularly that no votes for the payment of any expenses of the government during the past or present year, be drawn into precedent, as acknowledging the legality of any expenditure heretofore made, or which may heretofore have been made without the consent of this house, or as determining for any future year the necessary quantum of any salary, contingent expenses or allowances whatsoever, and in confidence that the grievances and abuses of which this House and his Majesty's subjects in this province complain, will be speedily redressed.”

On the 23d February, previous to the passing of this resolution, the following communication from his Majesty's Government through the Secretary of State for the Colonial Department, was by Message from the Governor in Chief laid before the Assembly with a view to the final adjustment of the question of Finance which has so long engaged the attention of this province.

“ His Majesty taking into consideration the best mode of contributing to the prosperity and contentment of his faithful subjects of the Province of Lower Canada, places at the disposal of the Legislature all his Majesty's interest in those taxes which are now levied in the province by virtue of different acts of the British Parliament, and which are appropriated by the treasury, under his Majesty's commands, together with all fines and forfeitures levied under the authority of such acts. His Majesty relying on the liberality and justice of the Legislature of Lower Ca-



nada, invites them to consider the propriety of making some settled provision for such portion of the expenses of the Civil Government of the province as may, upon examination, appear to require an arrangement of a more permanent nature than those supplies which it belongs to the Legislature to determine by annual votes.

“His Majesty has directed to be prepared and laid before the House of Assembly, an estimate of the sums required for the purpose ; and in directing the preparation of that estimate, his Majesty has been guided by a wish never absent from his heart, to call upon his faithful subjects for no other supply than such as may appear to be required for the due execution of those services which it is proper to charge upon the civil list.

“His Majesty concedes the disposal of these revenues with cordial good will, and cannot doubt it will be met with a reciprocal feeling by the representatives of an attached and loyal people.

“The revenue given up, taken upon the average of the last two years, amounts to £38,125 currency ; and the amount of the Civil List according to the estimate therewith transmitted amounts to £19,500. It is not, however, necessary to call upon the Legislature to grant the whole sum of £19,500, in as much as by the Provincial Act of the 35th Geo. III. the sum of £5000 is permanently granted towards the maintenance of the civil government, the moderate sum of £14,500 is therefore all that is deemed necessary to ask for the completion of the proposed arrangement.

“It is proposed that the duration of the civil list should be for the life of his Majesty.

“It is hoped that the arrangements thus detailed will be received in the spirit in which they are dictated,—a spirit of conciliation and confidence.

“His Majesty is prepared to surrender a large and increasing revenue ; he asks in return a fixed and moderate Civil List, much less in amount than the revenue given up, and the settlement of this agitated question, will be deemed by His Majesty one of the happiest events of his reign, the glory of which (the people of Canada may be assured) will be the promotion of the happiness and content of all classes of his subjects in every quarter of the globe.”

“The Governor in Chief having thus obeyed the commands he has received, in making the foregoing communication to the House of Assembly, desires to add that if in the course of proceedings on this important question, they should deem it expedient to require explanation from him on the subject of it,



he will at all times be ready to afford such explanations ; and he will, moreover, most willingly supply any further information they may desire to have, to the utmost extent compatible with his duty to his Sovereign."\*

• Two days after this communication, his Excellency sent the following Message to the House of Assembly :—

**AYLMER, GOVERNOR IN-CHIEF.**

The Governor-in-Chief having, in his Message of the 23d instant, communicated to the House of Assembly the commands of his Majesty, received through the Secretary of State for the Colonial Department, regarding the question of Finance, which has for so long a period engaged their attention, thinks it necessary to enumerate in detail the several branches of Revenue which it is deemed expedient to exempt from the operation of the proposed arrangement.

This further communication appears to his Excellency to be the more desirable as it will remove all grounds for future discussion when the adjustment of the main question shall have taken place, and as it will enable the House of Assembly to enter upon the consideration of this important topic with a full and precise understanding of the views of his Majesty's Government ; these views are now exhibited by the Governor-in-Chief to the House of Assembly in that spirit of frankness and good faith which characterizes the instructions he has received, and which cannot fail to improve the confidence of the House of Assembly in the good intentions of his Majesty's Government.

The Revenues to which the Governor-in-Chief alludes are the Casual and Territorial Revenues of the Crown, and are classed under the following heads, viz :—

- 1.—Rents of the Jesuits' Estates.
- 2.—Rent of the King's Posts.
- 3.—Forges of St. Maurice.
- 4.—Rent of King's Wharf.
- 5.—Droit de Quint.
- 6.—Lods et Ventes.
- 7.—Land Fund.
- 8.—Timber Fund.

If the Funds derived from these sources operated in any degree as a tax upon the people, or tended either in their nature, or in the mode of their collection, to impede or impair the prosperity of the Province, his Majesty's Government would have hesitated in proposing to retain them at the disposal of the Crown. They stand, however, upon a perfectly different ground from taxes, properly so called. They are enjoyed by the Crown by virtue of the Royal prerogative, and are neither more nor less than the proceeds of landed property, which legally and constitutionally belongs to the Sovereign on the Throne ; and as long as they are applied, not to undue purposes of mere patronage, but to objects which are closely connected with the public interests of the Province, it is not easy to conceive upon what grounds of abstract propriety, or of constitutional jealousy, the application of them according to his Majesty's commands, under responsible advice, can be impugned.

A.

*Castle of St. Lewis, Quebec, 25th February, 1831.*

With all possible respect for his intentions and abilities, the foregoing despatch evidently proceeds upon erroneous views in relation to the matter in question, and which are quite inexcusable in the Colonial Minister, but common to all English Statesmen, who uniformly confound the existing differences with those which subsisted between the old colonies and the parent state. The difference between the two cases we have already attempted to shew. They confound too the present condition of this Colony with the condition of the old British Colonies, when their revolution broke out. The difference here we have also attempted to point out. They evidently suppose that we would be glad to join the United States. This is not so: the manners and habits of the majority of the people of this Province are essentially different from those of the adjoining countries. The Canadians well know that they would be merged and lost in such an union, and we all know that, according to a fundamental law of the United States, all imposts upon goods imported from abroad, are payable into the National Treasury; that we should be charged with duties greater than we could bear, as appears by their Tariff, and that we should be obliged to obtain supplies for the civil expenditure of the country by direct taxation, a thing that we have not been accustomed to and which we do not like. The less blame attached to Lord Goderich for this recommendation, as it was but calculated to carry into effect the following clause of the report of the Canada Committee of 1827:—

“Although from the opinion given by the Law Officers of the Crown, your Committee must conclude that the legal right of appropriating the revenues arising from the act of 1774 is vested in the Crown, they are prepared to say that the real interests of the province, would be best promoted by placing the receipt and expenditure of the whole public revenue under the superintendence and controul of the House of Assembly.”

In accordance with this view of the subject, the Imperial Parliament passed an act in the 1st and 2d year of his Majes-

ty's reign, authorising the Legislatures of this Province and of Upper Canada, to appropriate at their discretion, all the monies which may arise from the duties imposed by the Act 14, Geo. III.

Although no blame for these measures and their consequences attaches to Lord Goderich, some does to the late Mr. Huskisson. He was evidently unequal to the position of Colonial Minister; and, as men placed in situations above their abilities are too apt to do, he shrunk from the responsibility incident to his office; and, as a weak and timorous General convokes his council of war, so did he move a committee in the House of Commons to enquire into the Civil Government of Canada, and obtain from them such advice as would justify his future proceedings, whatever effects they might have upon the future colonial interests of the Empire.

As matters now stand, it requires not a magician's ken to see that the British Parliament will be driven to the necessity of resuming the appropriation made by the 14th Geo. III., which has thus been surrendered; and England may then say to this Colony,

*Quoties volui congregare filios tuos quemadmodum avis nidum suum sub pennis, et noluisti?*

## No. XXIII.

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**CONCLUSION.**


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QRID autem habent admirationis, cum prope accesseris ?  
CICERO, 4, de finibus, &c.

Having thus examined the more prominent public proceedings of the Session of 1831, and vainly sought the reasons of the admiration of his Excellency Lord Aylmer, expressed in his Speech at the close of that Session, it remained for me, in order that no portion of the subject might be omitted, to examine the various Messages transmitted by his Excellency to the House, and to ascertain whether the course pursued by the House in relation to them was such as to produce a sentiment of satisfaction in his breast, so great as to burst forth in the expression of the admiration with which his Lordship was pleased to honor them as the high meed of their labours.

The following is a list of the Messages of his Excellency with the proceedings had upon them:—

- 1.—Two Messages of the 24th and 25th January, acquainting the House that, by reason of severe indisposition, his Excellency could not meet the House in Provincial Parliament. Referred to Committee of Privileges; Committee report the course adopted by his Excellency to have been irregular. House concurred in the report.
- 2.—Message with plans and estimates for the erection of a Penitentiary and House of Correction at Quebec; referred; committee report; report committed.
- 3.—Do. Transmitting proceedings had by Trinity Board in

relation to the erection of a Light House on the Island of St. Paul, and an address praying for a remuneration to certain officers for extra services, together with an estimate of the expense to be incurred in completing the Light House at Anticosti; Bill to provide for the establishing of light houses at Anticosti introduced and passed.

- 4.—Do. With public accounts for 1830; referred.
- 5.—Do. With copy of communication from the Commissary General on the subject of the Currency, and informing the House that the Commissary General was then absent on public duty; address from the House for further information on the subject.
- 6.—Do. Relating to the renewal of Commissions, acquainting the House with the proceedings had upon that subject within the colony, with an extract from a letter of Mr. Hay, Under Secretary for the Colonial Department; referred to Committee of Grievances.
- 7.—Do. Recommending the subject of the Chambly Canal to the consideration of the House; address to his Excellency upon the subject.
- 8.—Do. Accompanied with opinions of Crown Officers relating to renewal of Commissions.
- 9.—Do. Recommending an advance for the payment of needy witnesses at Montreal; no proceedings taken by the House upon this Message.
- 10.—Do. With public estimate; referred.
- 11.—Do. Relating to Boundary Line between Upper and Lower Canada; bill to regulate introduced and passed.
- 12.—Do. Recommending the House to provide for the expense of remitting certain fines by the Collector at St. Johns to the Receiver General; referred.
- 13.—Do. Relating to Emigrant Hospital; bill for its support introduced and passed.
- 14.—Do. With an account of expences incurred in 1830; referred.
- 15.—Do. Relating to repairs of Court House at Quebec; referred.
- 16.—Do. Respecting New Market at Montreal; not referred.
- 17.—Do. Relating to Court Houses and Gaols; bill introduced to authorize erection of; introduced and lost in Committee.
- 18.—Do. Recommending increase of salary to certain public officers; referred.

- 19.—Do. With copy of Imperial Act, 1, Will. IV., c. 23, relating to actions; bill introduced and passed in consequence thereof.
- 20.—Do. With copy of Imperial Act, 1, Will. IV., c. 4, relating to renewal of commissions; referred to Committee of Grievances.
- 21.—Do. With a proposed Civil List; referred.
- 22.—Do. Informing the House that Mr. Routh, the Commissary General had returned to Quebec.
- 23.—Do. Relating to Gaol at Sherbrooke; bill introduced and passed for relief of Commissioners for its erection.
- 24.—Do. Recommending renewal of the act relating to the salary of Tidewaiters; bill introduced and passed.
- 25.—Do. Relating to Hospitals; referred and further proceedings had thereon.
- 26.—Do. Relating to Agriculture; bill introduced and passed for encouragement of.
- 27.—Do. Relating to Royal Institution; referred.
- 28.—Do. Recommending advance to needy Crown Witnesses at Quebec; not referred.
- 29.—Do. Respecting qualification of Militia Officers; bill introduced and passed.
- 30.—Do. Relating to education of Deaf and Dumb Persons; referred.
- 31.—Do. Education and Schools; bill passed to encourage them.
- 32.—Do. Relating to Chaudière Bridge; bill to appropriate a further sum to complete it, passed.
- 33.—Do. Recommending a further sum for exploration of country between St. Maurice and Ottawa; not referred.
- 34.—Do. Relating to Montreal Harbour, further proceedings had in relation to.
- 35.—Do. Relating to Customs at Nouvelle Beauce; further proceedings had thereon.
- 36.—Do. Relating to Communication between Upper and Lower Canada; further proceedings had thereon.
- 37.—Do. With Widow Rolette's Petition; Idem.
- 38.—Do. Relating to Judges' Circuits; not referred.
- 39.—Do. Informing the House that his Excellency had suspended the Attorney General. Clerk of the House ordered to furnish that officer with copies of all documents relating to the complaints of the House against him.

The usual vote of thanks was made for none of those Messages. It will be seen that the search for admiration has here again been in vain.

I trust, however, my readers will be satisfied, at least with my diligence. When I entered upon this enquiry, I had no idea that it would reach the present extent, or I would have shrunk from this addition to the other labours necessary for me to gain my livelihood.

I have confined myself strictly, therefore, to what was absolutely necessary. It would have been satisfactory to me to have gone into the subject of colonies generally, and I do flatter myself, that with the advantages possessed by a native Colonist, I could have pointed out errors fallen into by very great names, and have thrown some light upon the colonial relation—a relation which has not hitherto been fully understood by any metropolitan statesman, arising from the disadvantages incident to their metropolitan education and metropolitan habits. But I must deny myself the pleasure of expatiating in this field, to resume other and less agreeable labours.

THE END.



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## APPENDIX.

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No. 1.—*Page 70.*

### OPINIONS ON THE RENEWAL OF COMMISSIONS.

QUEBEC, *7th December, 1830.*

SIR,

I have had the honour to receive your letter of this day, respecting the effect of the demise of His late Majesty upon the Commissions of Officers in the Colonies, and in answer, beg leave to state, for His Lordship's information, that in my opinion, every Commission issued in this province in the name of the late King, will be determined at the expiration of six months next his death, and that the same rule must obtain in the instances of Commissions issued in the name of his royal predecessor George the Third.

By the common law all Commissions were determined by the death of the King; and to remedy the inconveniences which this principle produced in practice, it was enacted by the 8th section of the Statute 9th Anne, cap. 7th, that every person and persons in any office, place, or employment, in any of Her Majesty's plantations, shall continue in their respective offices, places, and employments "for the space of six months next after the death or demise of Her Majesty, her heirs, or successors, unless sooner removed or discharged;" and this is the law of Canada in consequence of the last clause of the 14th Geo. III. cap. 83, and the 33d section of 31st Geo. III. cap. 31.

A statute (57th Geo. III. cap. 45) was passed in the year 1817, to continue in the colonies all persons in their respective offices, unless they should be removed or discharged by His

Majesty George the Fourth ; and by this Act, upon his accession to the throne, the operation of the statute of Anne was prevented ; but no provision was made by the 57th Geo. III. cap. 45, as to the accession of any subsequent Sovereign, nor was any statute on this subject passed in the reign of George the Fourth.

From the facts stated it must be obvious that the statute of Anne will take effect at the expiration of six months from the demise of His late Majesty, and as it must of course be obeyed, new commissions in the name of His present Majesty, will be of indispensable necessity.—I have the honor to be, Sir,

Your obedient servant,

J. SEWELL.

Col. Glegg, Secretary, &c.

MONTREAL, 11th December, 1830.

SIR,

In obedience to the reference made to me in your letter of the 7th inst. requesting that I would report, for the information of His Lordship, what effect, in my opinion, the demise of His late Majesty King George the Fourth will have on the commissions of public officers of this province, after the lapse of six months from that event, and whether a renewal of such commissions will be necessary from and after the expiration of that period of six months, I have the honor to report as my opinion in this respect :—That by the common law of England, all commissions issued in the name of the King, ceased and determined by his death, and all writs and process in the courts of justice abated or discontinued. To remedy this inconvenience, the Statute 7th and 8th William III. chap. 27, was passed by which these commissions, writs, and processes were continued for six months after the death of the King. The provisions of this statute were afterwards extended to the colonies by Statute 1st Anne, chap. 8, rendering it thereby a general law throughout the several dominions of the empire. These commissions being from matter of convenience extended and continued for six months after the demise of the King, must, therefore, necessarily cease and determine from and after the

expiration of that period, as the common law principle will then take effect. If any exception could be made to this principle, it would be in regard to the commissions of the judges, as by the Statute 1st Geo. III. chap. 23, it is enacted that their commissions shall continue and remain in full force, notwithstanding the demise of His Majesty, or any of his heirs or successors; but, in my opinion, this statute does not extend to the colonies, not only from the particular provisions it contains, which are applicable in England only, but also, from the similar necessity there appears, that to give effect to this statute in the colonies, it ought to have been expressly extended thereto, on the same principle that it was found necessary to extend the above statute of the 7th and 8th William III. to the colonies, by the statute 1st Anne, chap. 8.

I am therefore of opinion, that six months after the demise of His late Majesty King George the Fourth, all the commissions of the public officers in this province will cease to have effect, and ought to be renewed.

All which is, however, humbly submitted to the consideration of His Excellency Lord Aylmer, by, Sir,

Your most obedient servant,

JAMES REID, Ch. J.

Lt. Col. Glegg, Secy. &c.  
Quebec.

K. B. Montreal.

## No. 2.—Page

### ON THE ALTERATION OF THE VALUE OF COINS.

Tertio loco probatur etiam de jure canonico idem esse, cùm diversum non reperiatur in eo statutum, per regulam, *Cap. l. de oper novi nunciat*. Nonobstat, *d. c. quanto*, quia responsio in promptu est, quod ibi non fuerat publico decreto constitutum aliud legitimum pondus monetæ; imò manebat antiquum decretum et definitio legitime ponderis à rege et populo publicè facta. Sed clanculum, sine legitima et pragmatica forma, et irrequisito populi consensu, defraudata fuerat moneta legitimo pondere: et sic, in effectu illegitima et fraudulenta moneta, ex-

cussa erat per avaritiam et tyrannidem principum proditorum ve-  
suorum, qui nil aliud agunt, quā ut sacrosanctam Regis majes-  
tatem, quam intemeratæ fidei, veritatis, justitiæ, et tot sacra-  
mentis dejuratæ, populi charitatis radiis perpetuò fulgere, et ā  
cunctis suspici et amari decebat, omni genere libidinum, scelerum,  
scurritatum, fraudem, et expitationum, populi deturpatum,  
infamem, et odibilem reddant. Unde, ut ibi dicit Innocentius  
III. magnum scandalum et detrimentum populi oriebatur.  
Quoniam manebat vetus norma et definitio monetæ, ā qua  
populus discedere nolebat, et sic quæ de novo contra id cude-  
batur, erat illegitima, et tamen per officiales seu magis predi-  
tores Regis de facto spargebatur in vulgus incautum, et sparsa  
non poterat, nec debebat habere cursum, ut pote illegitima:  
habentes autem veterem bonam monetam, nolebant expendere  
metu ne sibi periret, majori que metu detrectabant novam recipere,  
simpliciores autem et incauti circumveniebantur. Quare, Rex  
Arragoniæ, ad quem Rescriptum Innocentii III. dirigebatur,  
illum abusum non solum correxit, sed tandem (ut scribit Petrus  
Bellegar, in Spec. Princip. rub. 36) *de mutatione monetar*, lege  
lata unā cum proceribus Regni et Civitatum in Pragmatica  
forma, et per modum contractus ā proceribus et civibus accep-  
tata Valentia 18, Calendis Maii, anno 1265, diffinivit certam,  
perpetuam, et immutabilem formam, pondus et puritatem  
materiæ, monetæ, Regalium Valentia, ita quod de libra seu  
marca argenti definitæ puritatis non possent fieri, nisi 68 Re-  
galia argenti. Subdit tamen postea arrosos modulos, ita ut  
in singulas marcas fierent 72 Regalia, bonitate materiæ dimi-  
nuta contra formam dictæ sanctionis.

Molin Opera, de Mut. Monet.—Quæst. C.

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### No. 3.—Page

#### ON INSTRUCTIONS TO GOVERNORS.

Instructions to Governors can convey to them no powers  
whatsoever, but are, or ought to be, considered as directions to  
them how to use the powers which are conveyed to them by  
commissions, and are intimations of His Majesty's resolution to

remove them from their government, and appoint other persons in their room, in case they shall use those powers in a different manner from that which is pointed out by their instructions. In short, they are instruments of a private nature ; and accordingly we are informed by Mr. Smith, in his excellent History of New York, that in that province the Governor's instructions (though they are in number above an hundred, and regulate the Governor's conduct on almost every common contingency) are never recorded. And the same thing may be said, I believe, with respect to the instructions given to the Governors of other provinces. Now, no instrument can, as I conceive, convey powers of Government in any country, or according to any system of laws, except it be of a public nature, and the contents of it made known to the persons over whom those powers are to be exercised, and who are to be bound to pay obedience to the acts that are to be done in pursuance of them. For how else shall the subjects over whom the person intrusted with such powers is to preside, know that he is to be their Governor, or in what respects, and to what degree, they are bound to obey his orders ? If a man of rank comes into a province, and tells the people of it, by word of mouth only, that the King has appointed him their Governor, that surely will not be sufficient to entitle him to their obedience ; but they not only *may* but *ought* to refuse to obey him till he produces some regular instrument in writing, properly authenticated, or proved to proceed from the King's authority, by which it appears that he is so appointed. And the proper instrument for this purpose in the English Government is a commission under the Great Seal of Great Britain, the authority and importance of which seal is so protected by the Law of England, that it is the crime of high treason, and punishable with the loss of life and forfeiture of lands and goods to the Crown, to counterfeit it. It is only, therefore, by the production of a Commission so authenticated that the Governor of a province can entitle himself to the obedience of its inhabitants. And further, when such a Commission is produced and published in a province, so as to give the people of it a satisfactory assurance that the person who produces it has been appointed by the King to be their Governor, they are only

bound to obey him in the exercise of such powers as are conveyed to him by the Commission, and not in other matters that are not mentioned in it, or do not fall under the powers that are specified in it. I mention this because I have known some persons imagine a Governor of a province to be the *full and general representative* of the King's Majesty, and to be legally capable of exercising all the acts of authority in the province which the King himself might lawfully exercise if he were present there in his own person. But this is undoubtedly a very mistaken notion, because the King never delegates to any of his Governors of provinces the whole of his royal authority, but specifies in their Commissions the powers he intends they should exercise. It is true, indeed, that he might, if he pleased, make such a delegation of his whole royal authority, by expressly declaring in his Commissions to his Governors "that he gave them full power to act in their respective provinces in his place and stead, as his vice-roys and lieutenants, and to exercise every power of government in the same which he himself might lawfully exercise if he were there personally present:" at least, I know of nothing that could hinder him from so delegating his whole authority if he thought fit. But it is certain that he never does so delegate it in his Commissions to his Governors of provinces, but, on the contrary, specifies at considerable length in these Commissions, the particular powers he intends they should exercise in their respective provinces, and with respect to some of those powers, expressly restrains his Governors from exercising them in the same extent as he himself might do; as, for instance, in the power of granting pardons to criminals, they being usually restrained by the words of their Commissions from granting pardon to persons guilty of treason or wilful murder. Since, therefore, the King usually thinks fit to delegate to his Governors of provinces some portions of his royal authority, and not others, there is no way of knowing what portions of it he has so delegated, and what he has not, but by examining the Commissions he has granted; and those powers that are specified in the Commissions must be allowed to belong to the Governors to whom the Commissions are granted; and the acts done by the Governors in the execution of those powers must



be submitted to as legal: and all other branches of the royal authority, besides those which are specified, must be supposed to have been reserved by His Majesty to his own person, and not to have been delegated to his Governors.

And, indeed, it is a most prudent and judicious practice thus to express in the commissions of the Governors of provinces, the particular powers which His Majesty intends to delegate to them, instead of delegating to them the whole royal authority, by such general and comprehensive words as are above-mentioned, or making them the *general representatives* of their Sovereigns, (as I have known some people conceive them) with all the power which the King himself would lawfully possess if he were present there in his own person: because if this were done, it would give occasion to numberless disputes and difficulties concerning the limits of the power which the King himself might lawfully exercise in the provinces, if he were so personally present in them, which, it is probable, the Governors of provinces would often conceive to be more various and extensive than the people under their government would be willing to allow; all which disputes are happily avoided by the prudent practice of specifying in the commissions themselves, the powers which are intended to be delegated to the Governors to whom the commissions are granted.

It seems reasonable, therefore, to conclude, upon the whole, that a Governor of a province has a right to exercise just so much of his Sovereign's royal authority as is specifically delegated to him by the words of his Commission under the Great Seal, and no more; and that every other delegation of the royal authority to him, by any instrument not under the Great Seal, is illegal and void, even though the power so delegated should be such as the crown has indisputably a legal right to; and much more therefore in all other cases.

*The Canadian Freeholder, by Baron Mazères.*

. . . No. 4.—Page

**COPY OF A PETITION FROM JAMES STUART, ESQUIRE,  
TO HIS MAJESTY.**

*To the King's Most Excellent Majesty,*

The humble Petition of James Stuart, of the City of Quebec,  
in the Province of Lower Canada, Esquire,

*Sheweth,*

That Your Majesty's Petitioner, in pursuance of a Mandamus in this behalf, was appointed Attorney General of His late Majesty George the Fourth, for the Province of Lower Canada, by Commission under the Great Seal of the said Province, bearing date the 31st day of January, in the year of our Lord 1825, and since Your Majesty's accession, in pursuance of Your Majesty's Mandamus, hath been appointed Your Majesty's Attorney General for the said Province, by a like Commission, bearing date the 11th day of December last.

That Your Majesty's Petitioner, from the period of his first appointment to the said office hath discharged the duties thereof with unremitting assiduity, faithfully and honestly; and his official conduct, in all particulars, has been not only unexceptionable, but, he humbly presumes to believe, has been meritorious, and deserving of approbation.

That Your Majesty's Petitioner has, notwithstanding, experienced the mortification of finding that his conduct has recently been misrepresented before a Committee of the Assembly of Lower Canada, and that upon certain ex-parte proceedings had in that Assembly, an Address was adopted in March last, to be laid at the foot of Your Majesty's throne, whereby the said Assembly prays that Your Majesty will be pleased to dismiss your Petitioner from the office of Attorney General of the said Province, which he now fills, and that Your Majesty will also be pleased henceforward not to grant to your Petitioner any place of trust whatever in the said Province, upon the ground that your Petitioner hath been guilty of certain alleged offences set forth in the said Address.

While Your Majesty's Petitioner most respectfully entreats permission humbly to represent to Your Majesty, that the alledged offences whereof in the said Address he is declared to have been guilty, have not been committed by him, and that he is alike guiltless of the said offences, and of every other offence; he begs leave also humbly to state that he has been thus declared guilty of the said alledged offences, without ever having been made aware, except by the said Address, that such offences were imputed to him,—without having been afforded any opportunity of answering or disproving the imputation of such offences,—and without, previously to the said Address, having in any manner been privy to, or made acquainted with the proceedings of the Assembly of Lower Canada, on which the said Address has been grounded, or with any proceedings that could lead to such a result.—In a word, Your Majesty's Petitioner has been convicted, by the mere authority of the Assembly of Lower Canada, of the said alledged offences, of which he is wholly guiltless, upon *ex parte* proceedings, to which he has been an entire stranger, without any opportunity for defence or justification, or hearing of any kind, and upon this conviction, the punishment and disgrace of your Petitioner are by the said Address prayed for.

Under the excellent constitution and laws of this country, of which Lower Canada, happily for its inhabitants, continues to be a dependence, no violation of the principles of natural justice in the exercise of authority is permitted, or can be apprehended. From this consideration, as well as from the well known justice of Your Majesty, your Petitioner is persuaded that the infliction of punishment for imputed offences, will never take place under Your Majesty's wise and just government, without allowing to the person accused an opportunity for self defence and justification.

Being entirely guiltless of the alleged offences of which, by the Assembly of Lower Canada, he has been declared to be guilty as above mentioned, Your Majesty's Petitioner humbly, but confidently, claims the protection of Your Majesty's justice, that he may not, for these imputed offences, be punished and disgraced, unheard.

Wherefore Your Majesty's Petitioner prays, that your Majesty will be graciously pleased to afford him an opportunity of establishing that the offences specified in the said Address of the Assembly of Lower Canada have been untruly imputed to him, and that he is guiltless thereof; and that Your Majesty will also be graciously pleased to grant him such other relief in the premises as Your Majesty, in your wisdom and justice, may deem fit and proper; and, as in duty bound, Your Majesty's Petitioner will ever pray, &c.

(Signed) J. STUART.

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### MEMOIR,

*Or Statement in explanation and support of the Petition of James Stuart, Esquire, to His Majesty.*

The petitioner, by his petition, appeals to the justice of His Majesty for protection in the office of Attorney General for the Province of Lower Canada, and that he may not be punished and disgraced for offences imputed to him by the Assembly of that Province, without an opportunity previously afforded to him for self-defence and justification. In the upright and faithful discharge of the duties of his office, it became incumbent on the petitioner, in the years 1827 and 1828, to institute certain criminal prosecutions, which are to be considered as having furnished motives for, and as being the immediate cause of, the proceedings adopted against him by the Assembly of Lower Canada. These prosecutions, at the time they were instituted, were of urgent necessity to enforce respect for the laws and constituted authorities of the country, and to maintain peace and good order. They consisted in indictments for seditious libels; for aggravated riots, accompanied by acts of violence against persons in authority; and for perjury. Three of these indictments were brought to trial, at Montreal, in March Term, 1830. One of them being for a riot at an election, held at that place, for the election of two members to serve

in the Provincial Assembly, and for assaulting and beating the returning officer, while employed in the execution of his office, and the other two for perjury. It was immediately after these trials, and during the excitement they produced in the political party to which the defendants belonged, that a petition to the House of Assembly was put in circulation for signatures, complaining of the conduct of the petitioner in relation to criminal prosecutions. The petition was signed exclusively by the partisans and adherents of the same political party, in subservience to whose views the principal offences which had been made the subject of indictments were committed; and the signatures to it were, for the most part, those of the persons accused, and of their attorneys, counsel, and friends. According to parliamentary usage, the petition became extinct with the Provincial Parliament in which it was presented, which expired a few months after. A new parliament met in January last, and early in the session General Committees were appointed, as is usual; and among these a standing Committee of Grievances. To this committee, composed entirely of persons belonging to the same political party, of which some of them were prominent members, and all of whom, from political animosity or personal resentment, were known to be hostile to the petitioner—the petition, already mentioned, to a former parliament, without any renewal of complaint on the part of the petitioners, and without any complaint whatever to the existing parliament, was referred; and, it would appear, was ostensibly made the foundation of the proceedings which are now brought under the consideration of His Majesty. To these proceedings the petitioner was an entire stranger, no intimation having been given to him that his conduct was the subject of complaint or investigation; no explanation or defence having been required from him; and no participation in or privity to them having been afforded. With the result only of these proceedings, the petitioner was made acquainted, which he learnt was an address to the Governor of the Province to suspend him, and an address to His Majesty to dismiss him from the office of Attorney General, and thenceforward not to grant him any place of trust whatever in the province. To this latter address, the petition, now most humbly submitted to His Majesty, relates.

To avert the injustice which would be accomplished if the address of the Assembly were acceded to, and to rescue his character from unmerited imputations, the petitioner has left the country of his abode, his business and pursuits, that he might in person present and sustain his petition for redress. He seeks justice on the facts of the case, without regard to a want of jurisdiction in the Assembly, to technical objections, or irregularity and insufficiency in the proceedings adopted against him; and if he notices these particulars, it is that he may not appear to have been unaware of them, and of those considerations of law and public policy which they suggest. While he adverts briefly to the latter topics, he purposes, in support of his petition, most distinctly to establish that his conduct, in the matters referred to by the Assembly in their address, has been not only unexceptionable but meritorious, and that no cause whatever has been afforded for the infliction of the punishment with which the Assembly has sought unjustly to visit him, undefended and unheard.

The punishment of the petitioner is prayed for by the Assembly on the ground of the following alledged or supposed offences, whereof they represent him to have been guilty.

“1st. Because he has abused the power with which he has been invested, as such Attorney General, so as to betray the confidence and trust with which His Majesty has honoured him, and that he has, by the serious offences, which he has committed in his high office, rendered himself totally unworthy of His Majesty’s future confidence.

2dly. Because the said James Stuart, Esquire, Attorney General of this province, by persisting in prosecuting, before the Superior Tribunals, persons accused of minor offences, which ought to have been prosecuted at the Quarter Sessions of the Peace, has been guilty of malversation in office, and this with the sordid view of increasing his emoluments.

3dly. Because the said James Stuart, Esquire, Attorney General of this province, in order to shew his attachment to the Executive Government of the day, has been guilty of partiality and persecution in the execution of the duties of his office, by instituting libel prosecutions, unjust and ill-founded, against

divers persons, and has thereby rendered himself unworthy of the confidence of His Majesty's subjects in this province.

4thly. Because the said James Stuart, Esquire, Attorney General of this province, by making, at the election of Sorel, or borough of William-Henry, in the year one thousand eight hundred and twenty-seven, where he was one of the candidates, use of threats and acts of violence to intimidate some of the electors of the place, and by promising impunity to others, displayed his contempt of the freedom of election, and has infringed the laws which protect it.

5thly. Because the said James Stuart, Esquire, Attorney General of this province, by prosecuting for perjury certain electors of Sorel aforesaid, who had voted against him, and by refusing or neglecting to prosecute others who were no better qualified, but who had voted in his favour, was actuated by motives of personal revenge, which made him forget his duty and the oath he has taken as his Majesty's Attorney General in this province, and that it would be dangerous to continue to him powers of which he has made use in so arbitrary and unjustifiable a manner.

6thly. Because the said James Stuart, Esquire, Attorney General of this province, by inducing, at the said election of Sorel, certain electors who were not qualified to take oaths usual on such occasions, although he knew that those individuals were not qualified, has been guilty of subornation of perjury.

Lastly. Because, by his conduct for several years past the said James Stuart, Esquire, Attorney General of this province, has brought the administration of Criminal Justice in this province, into dishonour and contempt; and that he has been guilty of high crimes and misdemeanors; that his conduct has utterly deprived him of the esteem and confidence of the inhabitants of this province; and that his continuing to occupy any place of trust therein could not be otherwise than injurious to His Majesty's Government in this province."

Before proceeding to give a distinct answer in detail to the imputation of each of these alledged offences in succession, the petitioner will beg leave succinctly to notice considerations which appear to him of the highest importance, in relation to



the course of proceeding thus adopted by the Assembly of Lower Canada, to the nature of some of the alledged offences, and to the form in which all of them are charged upon the petitioner.

By its address to His Majesty, the House of Assembly, it appears to the petitioner, has not exhibited charges of official misconduct against him, to which he is required to furnish an answer, and on which a determination, after the requisite investigation, is sought. But assuming to itself, it would seem, the power, on the *ex parte* statements of individuals, made in the absence of the party accused, in secret, and not under oath, of convicting a public officer not only of acts of official misconduct, but even of criminal offences, within the exclusive jurisdiction of Courts of Law; the Assembly, by its address, prays for the punishment of the petitioner, as on a conviction which has determined his guilt. Under this view of the Address, the Assembly has assumed the character and functions of judge, as well as accuser, in respect of the same accusations; it has converted itself into a Court of Justice for criminal offences, cognizable by Courts of Law only; it has exercised and blended in itself the functions of accuser and Court of Grand and Petit Jury, in respect of the same accusation, by declaring the petitioner guilty of the offence of subornation of perjury; and of all the alledged offences specified in the address, including the offence last mentioned, it has convicted the petitioner, in his absence, without defence or hearing of any kind on his part, upon the *ex parte* statements of individuals, examined in secret, not under oath, without cross-examination or opportunity for cross-examination on his part, and entirely irresponsible for the falsehoods by which they have sought to injure him. That such a course of proceeding involves an assumption of unconstitutional and illegal powers on the part of the House of Assembly, and is, moreover, repugnant to reason and justice, is too evident to require observation.—It becomes, therefore, as it appears to the petitioner in his humble apprehension, a most important preliminary point for consideration, whether the address from the Assembly does or does not possess the character now ascribed to it. If this character do belong to it, a conclusive reason would seem to be thence

decided, that it should not be acted upon, but that the House of Assembly should be left to exhibit against the petitioner, if so advised, any complaint or accusation which it may be within its competence to prefer, in such form and manner as may admit of an answer, investigation, and decision on it. This being, as the petitioner believes, the first instance of the assumption of such power by a colonial Assembly, it would seem to be most expedient, for the security of public officers throughout His Majesty's colonies, and for the faithful, upright, and efficient administration of the authority of government therein, that it should not be permitted to acquire the force of a precedent.—Indeed, with the exercise of such powers in prospect, as have been assumed by the Assembly of Lower Canada, in this instance, honorable men, it could not be supposed, would enter into the public service; the faithful and honest discharge of official duties could not be expected, nor could colonial governments continue to subsist.

If, however, the address of the Assembly is to be considered not as importing a conviction of alledged offences, which appears to be its true character, but as the exhibition of charges which the petitioner is called upon to answer; the nature of the charges, as well as the form in which they are conveyed, necessarily demands attention. The charges, the petitioner apprehends, must be such as it is competent to the Assembly to prefer, and they ought to contain a sufficient specification of facts to admit of an answer. Conceding to the Assembly the right of preferring complaints and accusations against public officers, who abuse the trust confided to them, these complaints and accusations, the petitioner also apprehends, must be restricted to acts of official misconduct, and cannot embrace offences cognizable by Courts of Law, in respect of which the Assembly can exercise no jurisdiction whatever. Two of the offences specified in the address are of the latter description—acts of violence at an election, amounting, it is to be presumed, to breaches of the peace and subornation of perjury. For charging the petitioner with these offences, the shadow of a cause, as will be presently shewn, was not afforded by him; but if he had been guilty of these offences, he could only be made amenable to justice for them, by indictment and trial in a

Court of Law, in like manner as all other His Majesty's subjects in Lower Canada would be. Instead, not only of entertaining jurisdiction of these offences, but actually convicting the petitioner of them, the fit cause to have been pursued by the Assembly, if sufficient cause for it had been laid before them, would have been, the petitioner apprehends, by address to the Governor, to have prayed that he would direct prosecutions for these offences to be instituted and carried on by one of the law officers of the Crown, in the competent tribunal, in due legal course.

In the charges of the Assembly, as in those proceeding from individuals, it would seem to be indispensably necessary for the purposes of justice, that a sufficient degree of particularity should be used to convey information to the person accused, of the specific facts on which his criminality or culpability is predicated.—Without such a specification, giving certainty to the charge, he cannot be apprized of the facts to be proved on the one side, and disproved on the other, and cannot, therefore, be prepared to defend himself. In all the alledged or supposed offences imputed to the petitioner by the address of the Assembly, he has reason to complain of the absence of any such specification from which the facts rendering him criminal or culpable could be known. This will be made apparent, by reference to the heads of offence, as stated in the address. The first and last heads of offence contained in the address being charged, it is to be presumed, merely as inferences from those of a more specific nature, need not be adverted to, as objectionable on the ground of generality. Under the second head of offence, the petitioner conceives it would have been fit and proper that a specification should have been given of the particular prosecutions which, it is alledged, ought to have been carried on in the Quarter Sessions, and were improperly made cognizable by the Court of King's Bench. Under the third head of offence, a specification of the several prosecutions which it is alledged were unjust and unfounded, would, the petitioner apprehends, have been necessary and proper to enable him to answer it. Under the fourth head of offence, the names of the electors who, it is alledged, were intimidated by threats and acts of violence, and also the names of individuals to whom

impunity, it is alledged, was offered, it is presumed, ought to have been introduced. Under the fifth head of offence, the names of the individuals charged with perjury, whom the Attorney General, it is alledged, refused or neglected to prosecute, it is humbly conceived, ought to have been specified. Under the sixth head of offence, which is a disgraceful misdemeanour, indictable at common law, and cognizable in His Majesty's Courts of Justice, it was of indispensable necessity, not only with a view to the adoption of any measures to be grounded on it, but in common justice and fairness to the party accused, that the names of the persons who, it is supposed, were suborned to commit perjury, should have been specified.

Upon this statement it is sufficiently plain, that, if the address of the Assembly is to be considered as containing charges which the petitioner is called upon to answer, there is an absence of the requisite specification of facts, to ascertain the precise offences with which he is charged, and to enable him to defend himself. But, however defective the address, viewed as an exhibition of charges, may be in this respect, and however considerable and unreasonable the disadvantages to which the petitioner is thereby subjected, it would, nevertheless, all comport with the consciousness of perfect innocence, on his part to abstain, on this ground, from entering into a full justification of his conduct, as to all the matters referred to by the Assembly. To enable him to do so, and for the purpose of supplying the particulars which are not to be found in the address of the Assembly, he must necessarily advert to a document which, otherwise, he conceives it would be improper to notice, and ought to receive no consideration. He refers to a report of the Committee of Grievances, which, in an address of the Assembly to the Governor of the Province, on the 26th of March last, is called "A copy of the evidence received by the Committee of Grievances, on the subject of the matters of complaint set forth in the petition of divers inhabitants of the city of Montreal, complaining of the conduct of James Stuart, Esq. Attorney General," and which, by that address, the Assembly prayed might be transmitted and laid at the foot of Throne. This document contains the *ex parte* statements of

individuals not under oath, examined as witnesses before the committee, in the absence of the petitioner, and without cross examination or opportunity for cross examination on his part—and these statements are denominated evidence. From the description of persons examined before the committee, being, exclusively as to all the material points of evidence, individuals rendered inimical to the petitioner by the discharge of his public duties, and who were under feelings of resentment and revenge towards him, and other strong motives urging to misrepresentation and falsehood, as well as from the partial and mutilated manner in which these statements, it would appear,\* were received and reduced to writing, this document is liable to objections peculiar to itself. But the petitioner at this moment, is desirous of noticing it, merely in its general character, as containing *ex parte* statements of witnesses, to ground an accusation against a public officer. In this character, its office, the petitioner apprehends, is limited to the purpose of accusation, it cannot constitute evidence for the purpose of conviction, it stands on the same footing as evidence taken before a Grand Jury, though inferior in degree to the latter, as not having been given on oath, but equally inadmissible to prove guilt, as having been given in an *ex parte* proceeding, in the absence of the party accused, and without any opportunity of cross examination on his part. In principle, therefore, the petitioner deems it an incumbent duty to protest against this document, as containing no admissible evidence to establish the truth of the charges of the Assembly. At the same time, in the peculiar situation in which he is placed, and without any sufficient specification of the imputed offences in the address, to enable him to answer and disprove the charges of the Assembly, he is unavoidably compelled to refer to this document, to supply the facts and circumstances that ascertain what the imputed offences really are, while, for the purpose of establishing his innocence, it is equally necessary to refer to it, in order to prove the falsehood and insufficiency of the statements on which the address of the Assembly has been grounded.

\* Vide affidavits of William Green, Esq. and A. Von Iffland, Esq. in *Appendix to this Memoir*, B and P. pages

Availing himself, therefore, of this document, for both these purposes, he will now proceed to show that the offences imputed to him in the address of the Assembly have not been committed by him, and that no cause whatever has been afforded for the imputation of them.

On the first head of offences, no observation is necessary—it being too general to admit of any answer.

On the second head of offence, the petitioner will beg leave to remark, that it is singular, that even, upon the slightest enquiry, it should have been supposed by the House of Assembly, that there was cause for imputing offence or blame to the petitioner—"for persisting in prosecuting (as it is alledged) before the superior tribunals persons accused of minor offences, who ought to have been prosecuted at the Quarter Sessions of the Peace." Persons at all conversant with the constitutions and proceedings of the Criminal Courts in Lower Canada, are perfectly aware, that it has always been, and continues to be, the duty of the Attorney General to prosecute before the superior tribunal, as it is called by the Assembly, that is before the Court of King's Bench, such persons as are in custody charged with the offences which by the Assembly are denominated "minor offences." This duty is derived from the powers with which the Court of King's Bench is vested, and which it has always exercised. Under the system of Judicature established in Lower Canada, a Court of King's Bench sits twice a year, in each of the districts of Quebec, Montreal, and Three Rivers, for the trial of all crimes and criminal offences whatsoever. At these times, the Courts of King's Bench in the several districts execute the powers and perform the functions of Courts of General Gaol Delivery, in which all persons being in custody are entitled, *ex debito justitiæ*, to be prosecuted and tried. The Attorney General of Lower Canada always has been, and continues to be, charged with the duty of instituting and conducting criminal prosecutions before the Courts of King's Bench. Hence he becomes auxiliary to these courts in the execution of their office as Courts of General Gaol Delivery; and it is alike incumbent on him to prosecute, as it is on the courts themselves to entertain the prosecutions, of all persons in custody for criminal offences, whatever may be the nature of

these offences, from the highest to the lowest. It has been, therefore, in the execution of the law of the land, that the offences referred to by the Assembly have been prosecuted in the Courts of King's Bench, not only by the petitioner, but by all his predecessors in office, without exception; and, as well before as since the petitioner came into office, no term of these courts has passed over in which prosecutions for the offences termed by the Assembly "minor offences" have not been instituted and carried on by the Attorney General for the time being. The petitioner, therefore, has been convicted by the Assembly of alledged "malversation in office," for having done that which it was his bounden duty to do, and for the omission of which he would have been really culpable. And to this supposed offence, consisting in the right and proper discharge of public duty, it has pleased the Assembly, without any reason whatever, gratuitously, to annex the imputation of a "sordid" motive.

The Petitioner will now beg leave briefly to advert to the evidence on which it would appear that the Assembly proceeded in thus erroneously converting the discharge of an important public duty into an offence. The principal witness examined on this head was a Mr. Jacques Viger, Road Surveyor at Montreal. Among the number of criminal prosecutions instituted by the petitioner, which the political party, whose enmity he thereby incurred, has made a subject of complaint, were indictments against a Mr. Stanley Bagg, for a nuisance, and against this Mr. Jacques Viger, as Road Surveyor, for non-feasance of duty, in having neglected to abate the same nuisance, which, by the provisions of a statute, as well as by the express orders of the Magistrates in Special Sessions, he was required to abate.\* These prosecutions, than which none more legal could be instituted, were loudly clamoured against by Mr. Viger and his party, as an infringement of law and justice; and the Court of Oyer and Terminer, in which the indictments were found, was represented to the country as having illegally and oppressively assumed a jurisdiction which did not belong to it, by entertaining those indictments. Mr. Viger, who, in making

\* Vide Appendix to Report of Committee of Grievances, No. 3, p. 54.



this unfounded clamour, was evidently very ill informed respecting the jurisdiction and powers of a Court of Oyer and Terminer, appears not to have been better informed respecting the duties of the Attorney General of Lower Canada, though equally disposed to find fault with both ; and it is not uncharitable to suppose, that on this latter head, the feelings excited in his mind by the indictments against Mr. Bagg and himself may have contributed to blind his judgement. His error in this instance, however, has become of much greater importance than the errors of a person moving in his sphere could be expected to acquire. In other countries, the errors of a Road Surveyor, in plain matters of law and government, it is not likely would be adopted as the determination of a Legislative Assembly. In Lower Canada it is otherwise : Mr. Viger is connected with the leaders in the House of Assembly, and his error has become in effect, it would appear, through his representations, the error of the Committee of Grievances, and through that committee, the error of the House of Assembly itself. Being a member of the Grand Jury in March term, 1830, Mr. Viger, it seems, became impressed with the belief that a number of the indictments laid before the jury at that time were improperly brought before them, and ought to have been prosecuted in the Quarter Sessions ; he, therefore, in a spirit of zeal for the public interest, as he would intimate, took notes of these indictments, that he might be better enabled afterwards to disclose what took place in the secrecy of the Grand Jury room. The benefit of these notes he afforded to the Committee of Grievances, and it is this supposed important disclosure of Mr. Viger (singular to mention !) which constitutes the principal evidence on this head of supposed offence. Now these notes of Mr. Viger, however valuable they may have been deemed by him, so far from establishing that, in preferring the indictments in question, the petitioner acted improperly, lead to a directly contrary conclusion : they demonstrate that it was his imperative duty to prefer them. Mr. Viger furnishes a list and description of indictments, which he says ought to have been presented in the Quarter Sessions ; and he thence infers that the Attorney General was culpable in prosecuting them in the Court of King's Bench. But Mr. Viger, from ignorance or inadvertence, does not appear to have

been aware that the duty of the Attorney General to prosecute these indictments in the Court of King's Bench became more urgent from the omission of the Clerk of the Peace to prefer similar indictments in the Quarter Sessions; and he seems also not to have perceived that the Attorney General could not be censurable for the neglect of that officer to do his duty. According to the statement of Mr. Viger, two Quarter Sessions of the Peace (in October, 1829, and January, 1830) had intervened since the commitment of some, and one Quarter Session of the Peace since the commitment of others, of the persons accused, before indictments were prepared against them by the petitioner, in March, 1830. These persons, therefore, according to Mr. Viger's own statement, had been detained in custody several months after the period at which they ought to have been tried; and at the opening of the March term of the Court of King's Bench, had legitimate cause of complaint on this ground. This cause of complaint would, of course, have been greatly aggravated if this detention in custody had been further prolonged, without prosecution and trial, and they had not received from the Court of King's Bench the benefit of a Gaol Delivery; in which case, that Court, as well as the Attorney General, would have been liable to censure. It is most manifest, therefore, that, without a violation of the liberty of the subject, and a culpable neglect of duty, in which the Court of King's Bench itself would have been involved, the petitioner could not omit to prosecute, in that court, the several indictments of which Mr. Viger communicated a list and description to the Committee of Grievances. Besides these indictments, Mr. Viger, evincing certainly a very vigilant and minute, though unusual superintendence of the Attorney General, in the discharge of his duties, adverts to three other indictments preferred in a former term, and disposed of in March term, 1830, which he says ought to have been prosecuted in the Quarter Sessions, viz.: those against Duncan M'Naughten, John Oliver, and William Covey. These indictments were for very grave offences; the first being for a gross libel on the administration of justice, by certain commissioners for the trial of small causes; the second, for the sale of unwholesale meat, by which the health of a number of persons had been injured; and the third

for an offence which a few years since was of frequent occurrence in Lower Canada, and of very injurious tendency: the defendant (an American) being charged with unlawfully having in his possession a large number of forged notes of different banks in the United States, amounting to fourteen hundred and sixty dollars, with intent to utter and dispose of them in fraud of the King's subjects. That these cases, from the nature of the offences, were deserving of prosecution before the Court of King's Bench, the petitioner conceives no doubt could be entertained; but if not prosecuted by the petitioner, the persons accused would not have been made amenable to justice in any other court. In the first two cases, also, the defendants and witnesses had, in the first instance, been bound over to the Court of King's Bench, and in the last the defendant was in custody. In prosecuting the three last-mentioned indictments, therefore, as well as those already mentioned, the petitioner discharged his duty, he presumes to think, meritoriously; and as to all of them, the singular supervision to which he has been subjected without being aware of it, might have been dispensed with.

The other witnesses examined before the Committee of Grievances on this head of offence, were Messrs. Green, Perrault, and Delisle, Clerks of the Peace, and two of them also Clerks of the Crown. In the statements of these gentlemen, particular directions of the Executive Government are referred to, the object of which was to enforce and facilitate the prosecution of certain offences in the Quarter Sessions. These directions originated in a Report of a Committee of the whole Council of the 31st of May, 1822, in which were contained several recommendations, with a view to a reduction of the public expense in the administration of justice, in criminal cases; one of the objects of the Report was to compel Clerks of the Peace to prosecute in the Quarter Sessions, criminal offences cognizable by that Court, which, for the want of prosecutors there, were prosecuted at a greater expense in the Court of King's Bench. The recommendation of the Committee on the last head, seems to have received execution in the District of Quebec, but from circumstances which it is unnecessary to particularize, was very imperfectly executed in the District of Montreal. Hence it became, necessary in the latter District,

to carry on prosecutions in the Court of King's Bench for offences, for which prosecutions might and ought to have been instituted in the Quarter Sessions. But the remedy for this was not to be attained by an unfounded inculpation of the Attorney General, for having done his duty, but by compelling the Clerk of the Peace to discharge that which the law of the land, and the directions of the Government had imposed on him. To this subject the attention of His Excellency Sir James Kempt, while he administered the Government of Lower Canada was drawn; and the petitioner will beg leave to refer to his report\* to His Excellency, in relation to it, as late as the 13th August, 1830, from which it will appear evident that the remedy for the evil in question was to be found in the proper discharge of the duty of the Clerk of the Peace.

Before quitting this head of imputed offence, the petitioner cannot omit to notice, that Mr. Green, a gentleman of acknowledged character and probity, one of the witnesses last mentioned, on his examination before the Committee, it appears, stated facts that might have rectified the erroneous view taken of the subject, by the House of Assembly, and which entirely disproved this charge, as to the District of Quebec; yet these facts, it is to be regretted, were not reduced to writing. It appears by the affidavit of Mr. Green, that the material facts now referred to have been suppressed, in the report of evidence taken before the Committee; and this was done by a member of the Committee, (Mr. Lafontaine,) who stated it was not necessary to reduce that part of Mr. Green's evidence to writing.—The petitioner has already adverted to the inadmissibility of such evidence as that contained in the report of the Committee of Grievances, under any circumstances to establish guilt. But when such mutilation has occurred in the manner of taking it, its claim to credit for any purpose cannot but be considered most seriously affected.

On the third head of offence, it is to be observed, that all the prosecutions for libels which have been carried on by the petitioner, originated in bills of indictment found by the Grand Juries in the Districts of Quebec and Montreal, in no instance

\* Vide *Appendix to this Memoir*, A. page

whatever has the petitioner exercised the right of filing *ex officio* informations for libels. He is at a loss therefore to conceive on what ground he can be held criminal or culpable, for having been merely auxiliary to Grand Juries in the institution of these prosecutions, which are not to be considered as proceeding from him, but from the country itself, through that organ by which it is constitutionally represented in such cases. These prosecutions, it is alledged by the Assembly, were unjust and unfounded. Without enquiring into the constitutional right of the House of Assembly to sit in Judgment on the decision of Grand Juries in finding bills of indictment, or the expediency or fitness of such an exercise of power by the Assembly, the petitioner will beg leave to remark, that it does not appear that either the Committee of Grievances or the Assembly itself had before it any materials whatever by means of which it could be ascertained whether the prosecutions complained of were unjust and unfounded or not. Neither the indictments in question, nor any of the evidence on which the Grand Juries proceeded in finding them to be true, nor any evidence whatever respecting the charges contained in them, were laid before the Committee or the Assembly itself.—So that the determination of the Assembly, that these prosecutions were unjust and unfounded, appear to have no other foundation than the will of the Assembly to declare them so: *Sic volumus, sic jubemus; stet pro ratone voluntas*. To this determination is opposed the legal and constitutional authority of Grand Juries, by which the prosecutions have been sanctioned and declared to be well founded; resting on such authority, these prosecutions, the petitioner apprehends, must be presumed to have had a legal, just, and sufficient cause, till the contrary may be established, by the verdict of a jury. This mode (the only legal and satisfactory one) of determining whether the prosecutions complained of were or were not “unjust and unfounded,” the House of Assembly does not desire should be pursued; and the defendants themselves have never signified or manifested any wish for its adoption, nor are they likely to do so. A conclusive and satisfactory answer to this head of offence, the petitioner, therefore, humbly presumes, is found in the indictments themselves. But apprehending, as in all humility he

does, that his agency in these prosecutions was not only not criminal or culpable, but meritorious, he seeks not to shelter himself under the constitutional authority of Grand Juries;— he is ready to justify each and every of them, as having been urgently necessary when instituted, and as having largely contributed to arrest the progress of disorder, and maintain the authority of His Majesty's government and the tranquility of the province, when both were assailed and endangered. It would be easy for the petitioner to establish this assertion, by entering into particulars, and at the same time to shew the connexion which subsists between the defendants in these prosecutions, and the individuals whose labours and influence have been conspicuous in the proceedings adopted against the petitioner. But he does not deem it proper to give such an unnecessary extension to this statement; and will beg leave merely, on this head of offence, to refer to his Report\* on the subject of these prosecutions, which was made to his Excellency Sir James Kempt, soon after he assumed the administration of the government of Lower Canada, and of which a copy is hereunto annexed. In this Report, he humbly apprehends, will be found the true character of the prosecutions in question, and sufficient reason to justify his conduct in relation to them, as well as that of the Grand Juries by which the bills were found.

On the fourth head of offence some explanations, the petitioner begs leave to submit, are necessary, in order that a just opinion of it may be entertained. To represent the Borough of William-Henry, or any other part of the province, in the Assembly as now constituted, was not an object of the ambition of the petitioner; and if inclination had been consulted, he would have been a stranger to the elections of that Borough. But, on his receiving the appointment of Attorney General, it was intimated to him, that it was deemed proper that he should represent it, as his predecessors in office generally had done. At the first election, therefore, which occurred after his appointment, he became a candidate for the Borough, and, at considerable personal expense, was elected. The Borough constituting part of the seignory of Sorel, which belongs to His Majesty,

\* Vide *Appendix to this Memoir*, Q. page

the King's Agent for that seigniory, on that as on other similar occasions, was relied on for the canvassing of the Borough. When a new election was about to take place in July, 1827, the petitioner placed the same reliance on the exertions of the Agent, as he had done at the previous election, and arrived at the Borough only the day before the election. He then found that no communication had been had with any of the electors on his behalf, while active measures, of which he had remained ignorant, had been used against him, and that all the influence and activity of a powerful political party, opposed to the then administration of the Colonial Government, and which is now dominant in the House of Assembly, would be exerted to prevent his election. This fact was verified at the opening of the election the next day, as a large concourse of persons from distant parts of the country, including officers of the militia, from colonels down to serjeants, Justices of the Peace, and other persons of influence, wholly unconnected with the Borough, were found ready to sustain the interests of an adverse Candidate.—Among these there were also individuals of inferior condition, whose physical powers had evidently been put in requisition to be used as circumstances might require. On the other hand, the petitioner, personally a stranger to the Borough, was absolutely alone and unsupported, except by some of the principal inhabitants of the place. It is not to be supposed, therefore, as alledged under this head of offence, that acts of violence, in restraint of the freedom of election, could proceed from the petitioner, with the aid of four or five peaceably disposed burgesses (the whole amount of the physical force on his side) in opposition to hundreds of individuals thus collected together, acting, besides, under the influence of strong political excitement, heightened by national and religious prejudices, and exhibiting both power and inclination to effect their purposes, without being scrupulous as to the means on the other side.—There is absolutely, therefore, and in the nature of things could not be, the slightest foundation or colour for the imputation of acts of violence to the petitioner; while, on his part, he certainly had reason to entertain well-founded apprehensions on this head. As little ground is there also for imputing to the petitioner the use of threats.—In endeavouring,



in a very unequal contest as to numbers, physical strength, and the employment of means, to sustain his interests as a candidate, the petitioner could have no reliance except on the execution of the laws.—In the exercise of rights derived from these, he did object to the admission of illegal votes ;—when such votes were insisted upon, he did require the oath of qualification to be administered ;—and, when the want of right was evident, he did, as far as opposing violence would permit, caution the individuals about to compromise themselves by taking the oath, against doing so ;—he did also represent to them (they being ignorant illiterate persons) the penalties they would incur, and did inform them they would be prosecuted for perjury, if they took the oath.—But all this was done by him, as would have been done by any other candidate, under like circumstances ; and, on his part, was the mere exercise of the essential rights of a candidate, without which he must have immediately renounced the contest. The urgent occasion there was for the caution he thus attempted to administer to some of the voters, and the explanations he was desirous of affording them, may be sufficiently illustrated by referring, by way of specimen, to three of the voters, viz. Antoine Aussant, Antoine Hus dit Cournoyer, and François Vandal.—The two former had executed deeds of gift of their property, in the Borough, to their children, without reserving any portion of the estate, in consideration of being lodged and fed by the donees, or enjoying in their houses what is vulgarly called in Lower Canada *la fortune du pot*, with the right also, in the case of Aussant, of insisting on a *life-rent* or *pension viagère*, in case of disagreement between the parties ; and the latter claimed the right of voting under the will of a testator *still living*. The returning officer (Mr. Crebassa), who was also the notary of the place, and in that character had in his custody the original deeds of gift and the will, was requested to put these men on their guard, when brought up to vote.—It was on his refusal to do so, that the petitioner interposed, and endeavoured, but ineffectually, to save them from the offence they were about to commit. He could with difficulty make himself heard amidst the loud vociferations of the adverse candidate and his partisans, urging these men to take the oath, under the circumstances now mentioned, of which they were well aware ; and to

vanquish their scruples, the adverse candidate gave them the strongest assurances that he would protect them against all consequences and stand between them and harm. False swearing, with such attendant circumstances in the very face of the public, must be of rare occurrence; and cases more deserving of prosecution than these, it is presumed, could hardly occur:— Yet these are three of the cases, in which the petitioner is held culpable for indicting the individuals; and the explanations he attempted to give them respecting the offence they were about to commit, and the penalties annexed to it, have been called *threats*, in restraint of the freedom of election!—Under this head of offence, the petitioner is charged with having intimidated some of the electors, while he promised impunity to others. This allegation is altogether untrue, and destitute of any the slightest foundation. It is derived from misrepresentation of facts which really occurred, intermixed with falsehood, proceeding from individuals influenced by a strong desire to injure the petitioner, and subject to no responsibility for the means thus employed to gratify their malice and resentment.— By misrepresentation, the legal and proper conduct of the petitioner, in cautioning ignorant and deluded men against the commission of perjury, is converted into intimidation; and by falsehood, in ascribing to the petitioner language which he never uttered, a colour is obtained for charging him with having held out an impunity to voters in his favour, which the most ignorant persons must have been aware it was not in his power to afford, and which no person in his office, not actually deprived of his reason, could possibly have even hinted at, as an inducement to perjury, in the face of the public. The falsehood in this malicious compound thus defeats its object by its very extravagance. It would be easy for the petitioner to analyze the statements of the different witnesses from which this compound of misrepresentation and falsehood has proceeded, and establish, as to each of them successively, their entire unworthiness of credit, even if their statements had been legally made under oath, with the responsibility incident to evidence in that form. But a great and, he thinks, unwarrantable extension of this memoir would be thus occasioned unnecessarily, inasmuch as the misrepresentation and falsehood now referred to, besides the

intrinsic evidence of it resulting from the facts which are stated, is distinctly proved by the affidavits on oath of the most respectable inhabitants of the borough, who were intimately conversant with the proceedings of the election from first to last, and who have been under the influence of no motive that could affect their veracity. To these affidavits,\* as well as those of several other persons, the petitioner will beg leave to refer, as not only disproving *in toto* this alledged head of offence, but as establishing the scrupulous fairness, and entire correctness of the conduct and deportment of the petitioner throughout the election.

On the fifth head of imputed offence, the petitioner will observe, that he prosecuted no person for perjury whom he did not caution, at the time of taking the oath, against doing so, and whose want of qualification was not so evident, as to exclude all doubt as to the falsehood of the oath which had been taken. The number of cases in which this false swearing occurred was so great, compared with the entire number of votes for the borough, which is only between one hundred and one hundred and twenty, that the legal right of voting must be rendered entirely illusory, if the false assumption of this right, by perjury, were not checked. The effect of this assumption, in the case alluded to, was evident, inasmuch as the majority of the adverse candidate was only two or three votes, and the number of his voters, against whom indictments for perjury were subsequently found, was not less than seven. For the sufficiency of the grounds on which each of these prosecutions was instituted, the petitioner most willingly holds himself responsible. The prosecutions which he is held culpable, under this head of offence, for not having instituted against persons who voted for him, he could not have instituted, without a gross breach of his duty, for two very conclusive reasons. In the first place, no private prosecutor ever requested him to institute such prosecutions, or ever said one syllable to him respecting them; and, in the second, no sufficient evidence ever reached his hands to warrant or justify him in laying any such accusations as those referred to before a grand jury. The facts, with

\* Vide *Appendix to this Memoir*, C, D, E, F, G, H, I, & P, pages

respect to this fifth head of offence, the petitioner begs leave to state are these:—In the term of the Court of King's Bench, at Montreal, which succeeded the election at Sorel, there were delivered to him, by the Clerk of the Crown, to whom they had been sent, several depositions, charging persons who had voted for the petitioner, with perjury; but, from that period to the present, no private prosecutor ever required that these depositions should be acted upon, nor has any inquiry respecting them ever been made. Upon looking into the depositions, the petitioner found them to have been made by persons of very low condition of life, and to be wholly insufficient to admit of any prosecution being grounded on them. He likewise found that one of the persons charged in these depositions with the commission of perjury, in having falsely sworn to a qualification, had indeed voted at the election, but his vote had been objected to, and he had in fact taken no oath at all. It was also, on the depositions of the same person (one Joseph Allard, an indigent carter) by whom this charge of perjury was thus falsely made, that two other of the charges rested. Under these circumstances, no prosecutions were or could be grounded on the depositions now referred to. But, it was deemed proper to prosecute Allard for the perjury he had committed, in charging with that offence the voter who had voted without taking any oath; and an indictment was accordingly found against him for perjury, in a Court of Oyer and Terminer and General Gaol Delivery, held at Montreal, in November, 1827. And in the same session an indictment was also found against Louis Marcoux,\* for subornation of perjury, in having procured him to commit the offence. After the arrest of Allard, the criminal means by which he had been prevailed on, by Marcoux, falsely to charge Cameraire with perjury, as well as those by which these depositions generally had been procured, were disclosed.† By this disclosure, the prudential considerations which had prevented any private prosecutor from incurring the responsibility of acting on such depositions, were rendered sufficiently evident.

\* Vide *Appendix to this Memoir*, M. page

† Vide *Affidavit of Joseph Allard*, in the *Appendix to this Memoir*, L. page

On the sixth head of imputed offence:—

Leaving to the consideration of His Majesty's Government the extraordinary assumption of power, by the Assembly of Lower Canada, in convicting him of this offence, by their own mere authority, as already mentioned, the petitioner cannot, without the most painful sense of injury, proceed to exonerate himself from the disgraceful imputation thus arbitrarily and unjustly cast upon him. The laws of the land, as to him, have been virtually suspended;—the safeguards provided for the security of men's persons, reputation, and fortunes, have, in this proceeding of the Assembly against him, been disregarded, and rendered of no avail. The whole extent of the injury thus inflicted can never be effectually counteracted by the petitioner. The establishment of his innocence, in the form now adopted, cannot effect this purpose. A wide dissemination has been given, under the authority of the Assembly, to a disgraceful charge, not within its jurisdiction or cognizance, and no circulation of its refutation, proceeding from the petitioner, can be equally extensive. Under any circumstances, therefore, the petitioner can only flatter himself with partial reparation for the injury he has experienced.

The offence of which the Assembly, by its assumed authority, has convicted the petitioner, is that of subornation of perjury "in having (as it is alledged) induced, at the election at Sorel, "certain electors who were not qualified to take oaths usual on "such occasions, although he knew that these individuals were "not qualified." Subornation of perjury is thus expressly charged on the petitioner, in respect of several individuals; yet it is not stated who these individuals were; and if the charge alone, therefore, were adverted to, there could be no means of repelling and disproving it. It is only, by referring to the above-mentioned document, called "A Copy of Evidence, &c." that the foundation of the charge can be ascertained. The petitioner has looked into this document to find the names of the several individuals, with the subornation of whom it might be supposed the Assembly meant to charge him; and he finds the name of one individual only, whose oath, it would appear, has given occasion to the charge. It certainly implies, the petitioner may be permitted to remark, singular facility in the

imputation of offence to him, that such an increased latitude should be given to the charge, beyond the foundation on which it rests;—that one supposed act of subornation, in the evidence, should be multiplied into several, in the charge and conviction of the Assembly; while it is also true, that the magnitude of the charge, and the impression to be made by it, as well as the difficulty of repelling it are thereby improperly enhanced.

The individual in respect of whom, it would appear, it was the intention of the House of Assembly to charge the petitioner with subornation of perjury, is one François Gazeille dit St. Germain, who, at the time of the election held at William-Henry, was a respectable inhabitant of that place. The facts, with respect to the oath taken by this man, within the personal knowledge of the petitioner, are the following:—On the second day of the election, in the morning, when in the act of proceeding alone from his lodgings to the poll, which was then held in a small apartment in the Presbytère, or Parsonage-House, the petitioner was met near the door by François Gazeille dit St. Germain, whom he had never seen before, and who informed him that he had come to offer him his vote. The petitioner inquired of him, as he was in the habit of doing when votes were tendered to him, the nature of his qualification, and learnt from him that his qualification consisted in a usufruct for life, or life-estate, in part of a house or houses and lands in the borough, of the whole of which he had executed a deed of gift to his son, subject to the reservation of a life-estate in part thereof, the annual value of which part so reserved he stated to exceed that which is required by law to confer the right of voting. Upon this statement, St. Germain was told by the petitioner, that he had a right to vote and that his vote would be gladly accepted. The ground of the opinion so expressed, could be susceptible of no difficulty. The act of the Imperial Parliament, 31 Geo. III. c. 31. by which the Constitution of Lower Canada is established, annexes to a freehold the right of voting, and a life-estate being a freehold, the right of St. Germain to vote on his usufruct, or life-estate, exceeding in annual value the sum required by law, could not be questioned. After this short explanation with St. Germain, the petitioner

proceeded to the poll, where he was for some time unattended by any of the persons who favoured his election. In this interval St. Germain presented himself as a voter, and tendered his vote for the petitioner. His right to vote was objected to by the adverse candidate, on the ground that an absolute right of property, or estate in fee-simple, alone conferred the right of voting, that it could not be claimed or exercised on a usufruct for life, or life-estate, and that therefore St. Germain could not vote on the reservation contained in the deed of gift to his son. This objection was answered by the petitioner, and some altercation took place between the adverse candidate and him, as to the admissibility of the vote; the one insisting that the objection was well-founded the other that it was not; while the returning officer (as was usual with him) gave occasion to the altercation, by not interposing his authority on the point in dispute. But, in all that was said, the fact of the reservation of a life-estate as stated by St. Germain was not called in question or doubted either by the adverse candidate, or by the returning officer, or by any person present; the legal effect of the reservation being alone the subject of debate between the adverse candidate and the petitioner. While the discussion on this point was going on in English, St. Germain, not understanding that language, withdrew of his own accord; he soon after returned, and of his own free-will (without having been spoken to by the petitioner in the intermediate time) took the oath and voted. If any doubt had been expressed as to the fact of the reservation having been made, the petitioner would have desired St. Germain to go for and produce the deed of gift, in order to remove it; but this was not thought of at the time, and by the most scrupulous person could not be deemed necessary, when the fact was acquiesced in by the adverse candidate, who is a native of the place and intimately acquainted with the inhabitants and their concerns, and also by the returning officer, who in his capacity of notary had attested the execution and was in possession of the original deed of gift. Except on the occasion of offering him his vote, and voting as already mentioned, the petitioner, to his knowledge, has never seen or spoken to St. Germain, either before or since the election, and would not know him if he were to see him. It is on these facts that



the petitioner has been subjected by the House of Assembly of Lower Canada, to the extraordinary charge of subornation of perjury, in having, as it is alledged, induced St. Germain to swear to a qualification which, it is now said, he did not possess. That such a charge should originate in such facts could not have been anticipated; the malicious misrepresentation and falsehood, by which it has been sought to obtain a colour for it, are now to be explained. The individuals examined before the Committee, consisting of the adverse candidate, his partisans and friends, two of whom are still under indictment for perjury, and subornation of perjury, on whose statements this charge has been founded, assert that St. Germain, when he tendered his vote, stated that he had given away his property to his son, and that, notwithstanding this fact, he was assured by the petitioner, that he had a right to vote. The fact thus stated is incredible; it cannot be supposed that the petitioner would assure St. Germain that he had a right to vote if he had merely said, that he had given away his property, which would have been equivalent to a declaration on his part, that he had no right to vote; and no person in his senses could, in such case, have ascribed to St. Germain the right of voting. It is here the misrepresentation occurs, on the part of these witnesses, by stating only a part of the fact, or *res gesta*, and suppressing the rest. It is true that St. Germain did state, that he had given away his property to his son, and it is also true that the petitioner assured him he had a right to vote; but it is equally true, that St. Germain added, that he had reserved a life-estate in part of the property so given away, on which he claimed the right to vote, and that it was, on this alledged reservation, not denied at the time, that he was told by the petitioner that he had a right to vote. The statement of the whole fact, as it occurred, would have excluded all pretence for attaching offence or blame to the petitioner, as his assurance to St. Germain, that he had a right to vote, would have been predicated on a fact, acquiesced in as true at the time, and sufficient to confer that right. Hence the *suppressio veri* in the particular now mentioned; and still further to give a colour to the charge, falsehood has been added, by representing St. Germain to have been reluctant in taking the oath, and to have

been pressed by the petitioner to do so, who, it is even falsely said, laid his hand on the book. To disprove the statements of these witnesses *in toto*, and deprive them of all credit, it is sufficient to establish the fact which they have maliciously suppressed, viz.—that St. Germain claimed the right of voting, on the reservation of a life estate. This fact is ascertained by the Affidavits\* of the most respectable inhabitants of the Borough, to whom St. Germain, the day before and on the morning he voted, stated his intention to vote for the petitioner, and the ground on which he claimed the right of voting, viz.—the reservation of a life-estate in part of the property he had given to his son, and to two of whom† he mentioned that he had spoken to the petitioner, as above mentioned, and had been told by him he had a right to vote on his life-estate. To these Affidavits the petitioner is enabled to add the Affidavits of St. Germain himself, and of his son,‡ the occasion and manner of taking which he begs leave to mention. Never anticipating that he could have become subject to such a charge as that in question, it was not, till after the address of the Assembly, and the publication of the document called “A Copy of Evidence, &c.” that he deemed it necessary to ascertain the actual residence of St. Germain.—He had removed, with his son, after the election, to another part of the country, where the petitioner caused him to be referred to, and his Affidavit taken of the facts as they really occurred, and also the Affidavit of his son, with whom he now lives. In this Affidavit, St. Germain confirms the fact established by the Affidavits already mentioned, that he claimed the right of voting and voted on the reservation of a life-estate.—He also negatives the use of any influence whatever on the part of the petitioner to induce him to vote; he states, that having signified, at the poll, his intention to vote for the petitioner, a discussion (*difficulté*) took place between the two candidates (referring no doubt to the discussion as to the admissibility of his vote on a life-estate, which, being in English, he did not understand) and he with-

\* Vide *Appendix to this Memoir*, D, E, F, & P, pages

† Vide *Appendix to this Memoir*, D. E.

‡ Vide *Appendix to this Memoir*, N. O.

drew ; that he soon after returned, and of his own free-will and accord took the oath ; that the Holy Evangelists, on which he was sworn, were put into his hand by Mr. Crebassa, the Returning Officer, and that the petitioner never touched his hand for the purpose of laying it on the book. He likewise states facts, of which the petitioner was not previously aware, viz.—that Mr. Nelson, the adverse candidate, the evening before he voted, called at his house to solicit his vote, and in answer to his inquiry how he had disposed of his property, he (St. Germain) told him that he had reserved to himself, by his deed, a life-estate in one or other of his two houses, at his option, and thereupon Mr. Nelson told him he had a right to vote, and that if any difficulty was made about it at the poll, he (Mr. Nelson) would soon put an end to it. He also swears that, on the same qualification, and at the solicitation of the same Mr. Nelson, he had previously voted for the two members for the county, in which the borough of William-Henry is situated. He likewise states, that the morning he voted, in order to be more secure as to his right of voting, he went to consult Mr. Crebassa, the Returning Officer, being the Notary before whom his deed of gift to his son had been executed, who refused to give him either information or advice on the subject, telling him at the same time to do as he pleased, by which he was the more confirmed in the belief that he had a right to vote. These last-mentioned facts, contrasted with the statements made before the Committee of Grievances, sufficiently exemplify the character, principles, and conduct of the persons with whom the proceedings in question against the petitioner originate. But they are not necessary for the petitioner's entire justification, which results from the simple fact, that St. Germain claimed the right of voting on a life-estate, and that the assurances he received from the petitioner that he had this right, were predicated on the supposed existence of such life estate, which at the time was not denied or called in question.

The falsehood of the charge of subornation of perjury, of which he has been convicted by the Assembly, and the absence of any the slightest probable cause for it, is thus convincingly established ; and the petitioner might abstain from further observations respecting it. But the true character of this proceed-

ing against him would be imperfectly understood, without some explanation also of the motives for the misrepresentation and falsehood which have been made manifest. St. Germain had voted early in the election, when a single vote was deemed of little importance; and his vote, as already established, had been distinctly given on the ground of a reservation of a life estate in the deed of gift to his son. At a later period of the election, when it was drawing to a close, and the value of a vote was much enhanced, two persons, Aussant and Cournoyer, who had also given away their property in the borough to their children, but who, by their own confession, had made no reservation of a life estate in any part of it, were prevailed on by the adverse candidate and his partisans to swear, as above mentioned, to a qualification, without the semblance of a reason for doing so. These men, as they were forewarned by the petitioner when they took the oath, were afterwards prosecuted for perjury. It then became an object with the persons by whose means and influence they had been got into this predicament, to extricate them from it, by falsifying the facts which had occurred, in relation to the vote given by St. Germain. He had voted on a life estate, of which, it would appear, he *bona fide* supposed the reservation to be contained in the deed of gift to his son, and which his neighbours and other persons (including the adverse candidate, Mr. Nelson himself) supposed him to possess. But, after the election, it was ascertained (whether from the fault of the notary by whom the deed of gift was prepared, or other cause,) that the deed of gift did not in fact contain such a reservation as St. Germain had supposed, and was believed, at the time he voted, to exist. With the aid of this circumstance, a defence and justification, or excuse for Aussant and Cournoyer, in having sworn falsely to a qualification which they did not possess, it was imagined, might be obtained, by converting St. Germain's vote into a precedent for the votes they had given, under very dissimilar circumstances. For this purpose, it was necessary to suppress the mention of the alledged title (a life estate) on which St. Germain voted, and represent him to have voted precisely under the same circumstances under which Aussant and Cournoyer voted. The persons who have concurred in this suppression have done so with the greater confidence, as

there were few persons present when St. Germain voted, and among these none of the persons who favoured the election of the petitioner, from whom contradiction could be apprehended. This singular mode of justifying the perjury, for which Aussant and Cournoyer were indicted, by endeavouring to establish that another person had previously committed a similar perjury, was resorted to on the trial of Aussant ; and it was afterwards thought that the same misrepresentation and falsehood, which had been irregularly and irrelevantly introduced into that trial, might be successfully directed against the petitioner in another quarter. The motives, therefore, for the misrepresentation and falsehood, which have been clearly established as to what occurred when St. Germain gave his vote, are to be found in the desire to obtain, by these means, justification or excuse for Aussant and Cournoyer, and to injure the petitioner.

So far as the justification of the petitioner is in question, under this head of offence, it matters not whether the life estate on which St. Germain voted was really possessed by him or not ; it is sufficient that he claimed the right to vote on that title, and that it was with reference to it that the petitioner assured him he had a right to vote. It may, however, not be unfit to mention, that the petitioner was not aware, till the trial of Aussant, that the reservation of a life estate in favour of St. Germain was not to be found in the deed of gift to his son. The fact of the reservation having been made was, at the election, acquiesced in as above mentioned ; and it appears, by the affidavits of both St. Germain, father and son,\* that it was stipulated between them, and ought to have been included in the deed of gift. It appears, also, that the elder St. Germain, who cannot read or write, still remains under the firm persuasion that the reservation is contained in the deed of gift ;—that his son continues to give effect to the reservation, as if it were contained in the deed,—and that the elder St. Germain, ever since the deed was executed, has enjoyed, and still enjoys the benefit of it.

Under different circumstances, the petitioner might have deemed it proper to advert to facts which are of a nature to invalidate the credit of the several witnesses examined before

† Vide *Appendix to this Memoir*, N, O.

the Committee of Grievances, in support of this head of imputed offence.—But, considering the falsehood of the charge to have been clearly and plainly established, he thinks he may, at least for the present, omit this disagreeable task; reserving, however, his right to do so, if it should hereafter be rendered necessary.

As he has already done, under a preceding head of imputed offence, it is incumbent on the petitioner that he should, under this head also, notice an alledged irregularity and incorrectness in the taking of evidence by the Committee of Grievances, in support of it, which must excite extreme surprise. By the Affidavit of Dr. Von Iffland,\* one of the witnesses examined before the Committee, it appears that, in the Report of the evidence taken before it, there has been a suppression of material facts and circumstances which made part of his answers to the questions put to him, and that the evidence contained in the Report, in a number of particulars, is incorrect and different from the evidence really given by him before the Committee. In what relates to François Gazaille dit St. Germain, it appears that Dr. Von Iffland stated before the Committee facts, from which it was to be inferred that the said St. Germain took the oath, of his own free will, upon an alledged reservation of a life-estate, the existence of which estate was not denied or doubted at the time he voted; and that these facts have been entirely suppressed in the evidence ascribed to Dr. Von Iffland. The facts which this witness thus stated before the Committee, and which have been suppressed in the Report of evidence, being the document above designated as “A Copy of Evidence, &c.” are in his Affidavit proved to be the following, viz:—

“ That St. Germain called upon Dr. Von Iffland the day before  
“ he voted, and, after mentioning his intention to vote for James  
“ Stuart, Esquire, one of the Candidates, stated also the nature  
“ of his qualification, which he represented to consist in the  
“ usufruct for life, or life-estate, in part of the house in the  
“ Borough, which he had given to his son, by deed of gift, ex-  
“ ecuted before Mr. Crebassa, Public Notary. The next morning,  
“ the said St. Germain again called on Dr. Von Iffland, and

\* Vide *Appendix to this Memoir*, P.

“informed him that he had just seen the said James Stuart, who  
“had told him, that if he (St. Germain) had reserved a life-estate,  
“as he represented he had done, he would have a right to vote.  
“That Dr. Von Iffland, being desirous of assuring himself of the  
“reservation stated by St. Germain to be contained in the deed  
“of gift to his son, immediately after went to the office of the  
“said Crebassa, for the purpose of seeing the said deed of gift,  
“and applied for the perusal of it to the said Mr. Crebassa, who  
“refused to let him see it. That soon after Dr. Von Iffland met  
“the said St. Germain, who persisted in the confident assertion  
“that the said deed of gift contained such a reservation, as he  
“had stated, and that he would go and vote for the said James  
“Stuart: and, in the course of the morning, Dr. Von Iffland  
“heard that the said St. Germain had voted for the said James  
“Stuart. That Dr. Von Iffland did not hear any doubts ex-  
“pressed of the truth of the fact stated by the said St. Germain,  
“as to the said reservation, until five or six days after the  
“election was over, when the said St. Germain, in conversation  
“with him, renewed his assertion, that he had reserved to  
“himself a life-estate, as above mentioned.”

The evidence of Mr. Green, which he states on oath to have been suppressed, was of a nature to defeat the second charge, by disproving it. The material facts, making part of Dr. Von Iffland's evidence, which he states, on oath, to have been suppressed, were equally calculated to disprove and defeat the sixth charge against the petitioner. Under these two heads of accusation, then, according to the express Affidavits of Mr. Green and Dr. Von Iffland, the evidence to prove innocence has been suppressed, while evidence, from which culpability of some kind or other might be inferred, has alone been reduced to writing. Upon such an extraordinary mode of investigating the conduct of a public officer, and establishing his guilt, by suppressing the evidence of his innocence, no observation can be deemed necessary. It is, however, strikingly illustrative of the spirit and manner in which the proceedings against the petitioner have been promoted and carried on by the individuals with whom they originate, and of the means which have been perseveringly employed to injure him. He will only further permit himself to express his regret, that



the facts thus suppressed should not have been reported to the House of Assembly, as it might reasonably be presumed that, with this evidence, of which it appears to have been improperly deprived, the Assembly of Lower Canada, in the judicious exercise of its high and important functions, would have abstained from both these charges.

Having, as he humbly apprehends, fully established the grounds on which his respectful appeal to His Majesty has been made, the petitioner submits the case set forth in his petition to His Majesty's gracious consideration, in the full persuasion that the measure of justice due to a servant of the Crown, in the faithful and honest discharge of his duty, will not be withheld from him.

(Signed) J. STUART.

*London, 46, Albemarle Street,  
6th August, 1831.*

True Copy, J. STUART.

*Copy of a Letter from James Stuart, Esq. to the Right Hon. Lord Viscount Goderich, one of His Majesty's principal Secretaries of State, relating to the foregoing Petition and Memoir.*

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*London, 46, Albemarle Street, 6th August, 1831.*

MY LORD,

In conformity with the intention expressed in my memorial, addressed to your lordship from Quebec, the 14th April last, on the subject of my suspension from the office of Attorney General for the Province of Lower Canada, I now do myself the honour to transmit to your lordship, to be laid at the foot of the throne, my humble petition, that His Majesty will be graciously pleased to afford me an opportunity of defending myself against and disproving the charges specified in the address of the Assembly of that province, for my dismissal from office. Together with this petition, I also do myself the honour to transmit to your lordship a memoir or statement in explanation and support of it. Being solicitous that the charges of the Assembly may receive the most complete and satisfactory investigation, it has been with much satisfaction that I have observed that an agent has been deputed by the Assembly to sustain their charges and address; and I beg leave to express my humble wish that, under your lordship's authority, he may be made acquainted with every allegation and document proceeding from me, in relation to this matter, in order that he may be enabled to contest them, if so advised.

I have the honour to be, with the greatest respect,

My Lord,

Your lordship's most obedient humble servant,

(Signed) J. STUART.

To the Right Hon. Lord Viscount Goderich,  
&c. &c. &c.

True Copy, J. STUART.

## APPENDIX TO THE MEMOIR.

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### No. 1.

*Copy of a Report made by JAMES STUART, Esq. Attorney General of Lower Canada, to His Excellency SIR JAMES KEMPT, in a letter to LIEUT. COL. YORKE, Secretary to His Excellency.*

Quebec, 13th August, 1830.

SIR,

I have been honoured with the commands of His Excellency Sir James Kempt, signified in your letter of the 5th May last, transmitting an extract from a Report of a Committee of the whole Council of the 31st May, 1822, in which certain recommendations are made with a view to the reduction of the public expenditure in the administration of justice in criminal cases; and requiring me to take the subject generally into consideration, and suggest any measures that may occur to me as necessary to give greater effect to the recommendation of the Council.

In obedience to His Excellency's commands, I have perused the extract of the Report of Council above referred to, with the documents connected with it.

In order to ascertain whether any thing can be done in furtherance of the object of this Report, it is necessary to mention the heads of expenditure, which it was intended by the Report to reduce, the means suggested for accomplishing the proposed reduction, and the effect of them.

The heads of expenditure were, 1st, The expense incurred in the conduct of criminal prosecutions by fees to the officers of the crown.

2ndly, The expense incurred in subpœnaing witnesses for the Crown in such prosecutions.

3rdly, The expense incurred in allowances to witnesses for the Crown in such prosecutions.

4thly, The amount of expense arising from the number and description of criminal prosecutions conducted by the officers of the Crown, in the superior courts of criminal jurisdiction.

Under the first head, was to be remedied the increased expense occasioned by allowing the Solicitor General to charge fees in criminal prosecutions conducted by the Attorney General. This objectionable cause of expense originated in an order of Council of 21st August, 1817, by which it was directed that the Solicitor General should be employed with the Attorney General in all criminal prosecutions, and that he should be allowed for this service the fees granted by the Tariff of 1801. Under this order, the services which at all times previously had been and could well be performed by one officer, were to be performed by two, with a consequent duplication of the expense. That this increased expense was unnecessary, and ought not to be incurred was very evident, and the committee recommended it to be discontinued, by rescinding the order above mentioned; so that, under this first head of expense, the proposed reduction has been accomplished.

Under the second head, a very large expense has been incurred by permitting the person charged with the duty of procuring the attendance of witnesses for the Crown, to make a Bill in detail in each prosecution, without perhaps a very minute examination of the grounds of his charges. Instead of this mode of remuneration, it was deemed preferable that the service in question should be performed for a specific sum *in globo*, and 100*l.* was allowed for it each term. This expense has been further diminished since I came into office, several hundred pounds having been saved to the public, by the course I have pursued; and I am not aware that it admits of any further reduction, except taking away the cause for this expenditure; that is, by obtaining the attendance of witnesses by means of recognizances instead of subpœnas. There is no doubt, that if the Justices of the Peace were to discharge their duty, by putting under recognizances the persons capable of

giving evidence in criminal prosecutions, and transmitting these recognizances regularly to the Criminal Courts for which they are intended, the necessity of subpœnaing witnesses would be obviated and this cause of expense prevented. But this duty is omitted to be performed in the greater number of cases, and hence the continuance of expense that ought to be unnecessary. The true and effectual remedy for this evil would be found in a Legislative enactment, similar to one recently adopted in England, empowering the Criminal Courts, in a summary manner, to impose a fine on Justices neglecting to take and transmit recognizances as required by law. Without such an enactment the object in view cannot be effectually attained. In the meantime, all that can be done is to limit the service of subpœnas to cases of absolute necessity, and restrict the charge for it to the lowest possible amount. This has been and continues to be done by me.

Under the third head, it was recommended by the Committee, that needy witnesses only should be paid, and that an affidavit of want of pecuniary means should be made by each witness to entitle him to an allowance. This recommendation has been acted upon; and no reduction under this head can be effected, except in so far as it may be accomplished by a close adherence to the recommendation of the Committee, and a scrupulously exact taxation of each witness. Since I came into office as Attorney General I can assert, that these restraints have been rigidly enforced, and nothing that I am aware of remains to be done to diminish this head of expenditure.

Under the fourth head, it was recommended by the report, that offences properly cognizable by the Quarter Sessions should be prosecuted in that Court. This recommendation, it is most expedient, should be acted upon at all times, and, if carried into execution, must have the effect of diminishing the number of prosecutions in the Superior Criminal Courts. The Officer whose duty it is to prosecute offences in the Quarter Sessions is the Clerk of the Peace; and it is only necessary that he should be assiduous in the discharge of this duty, to accomplish the object of the Report on this head. I am of opinion, that the Clerk of the Peace ought to be allowed a reasonable sum for the conduct of each criminal prosecution

which it becomes his duty to carry on; and beyond this it is only necessary for the accomplishment of what is desired, that he be compelled to do his duty.

Under this view of the subject, it is plain that the reduction of the expense in criminal prosecutions can only be expected—First, from a more exact and regular discharge of the duty of Justices of the Peace, in taking and transmitting recognizances. Secondly, from a more exact discharge of the duty of Clerks of the Peace, in prosecuting offences cognizable by the Quarter Sessions. An injunction, in the form of a circular letter, was laid by the Governor on Justices of the Peace, subsequently to the Report in 1822, to discharge their duty in the particular just mentioned. Perhaps a renewal of this injunction might be of some use; and it might also perhaps be of advantage, that the Clerks of the Peace should, by a circular letter, be required to discharge the duty which, as above mentioned, belongs to their office. No other steps than these, and a recommendation to the legislature to pass an enactment, such as above suggested, for compelling Magistrates to take and transmit recognizances, can, I conceive, be adopted by the Executive Government, with a view to the reduction of expenditure in the administration of justice in criminal cases.

I have the honour to be,

Sir,

Your most obedient humble servant,

(Signed) J. STUART, Attorney General.

True Copy, J. STUART.

giving evidence in criminal prosecutions, and transmitting these recognizances regularly to the Criminal Courts for which they are intended, the necessity of subpœnaing witnesses would be obviated and this cause of expense prevented. But this duty is omitted to be performed in the greater number of cases, and hence the continuance of expense that ought to be unnecessary. The true and effectual remedy for this evil would be found in a Legislative enactment, similar to one recently adopted in England, empowering the Criminal Courts, in a summary manner, to impose a fine on Justices neglecting to take and transmit recognizances as required by law. Without such an enactment the object in view cannot be effectually attained. In the meantime, all that can be done is to limit the service of subpœnas to cases of absolute necessity, and restrict the charge for it to the lowest possible amount. This has been and continues to be done by me.

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I have the honour to be,

Sir,

Your most obedient humble servant,

(Signed) J. STUART, Attorney General.

True Copy, J. STUART.

## No. 2.

*Affidavit of WILLIAM GREEN, Esquire, Clerk of the Crown  
for the District of Quebec.*

## PROVINCE OF LOWER CANADA.

DISTRICT OF } To wit:  
QUEBEC.

WILLIAM GREEN, of the City of Quebec, Esquire, maketh oath, that he hath held jointly with François Xavier Perrault, Esquire, the office of Clerk of the Peace for the district of Quebec, during nineteen years, and hath held the office of Clerk of the Crown during seven years. And the deponent further saith, that on the twenty-sixth day of February, now last past, at the said city of Quebec, he was examined before the Committee of Grievances, sitting under the authority of the house of Assembly of this Province. That in the course of his examination as such witness, as aforesaid, he, this deponent, stated to the said Committee, as a part of his evidence, that the Attorney General (meaning James Stuart, Esquire, His Majesty's Attorney General for this Province) had never taken any step for causing cases to be tried before the Court of King's Bench for the district of Quebec, which were susceptible of trial, or might be tried before the Court of Quarter Sessions for the same district; and that the said Attorney General had never thrown any obstacle in the way of prosecutions before the said Court of Quarter Sessions; but, on the contrary, that the said Attorney General had, on numerous occasions, and whenever applied to by the Clerks of the Peace, given every facility for removing such difficulties as occasionally occurred, in carrying on prosecutions before the said Court of Quarter Sessions.

And the deponent further saith, that he also, at the same time, stated to the said Committee, as part of his said evidence, that the consideration by which the said Attorney General has been governed in prosecuting, or not prosecuting, in the Court of King's Bench, offences of petty larceny and mis-

demeanor, has always been, that of the party accused being in custody or not, during the session of the Court of King's Bench: if the party accused has been in custody during such session, he has been prosecuted in the Court of King's Bench, in favour of the liberty of the subject, and as being incident to the delivery of the gaol; if not, the case has been left for prosecution in the Quarter Sessions.

And the deponent further saith, that his said evidence, in the particulars aforesaid, though given before the said Committee as aforesaid, was not reduced to writing, it having been stated by the member of the Committee (Mr. Lafontaine) who put the question, in answer to which the said evidence was given as aforesaid, that it was not necessary to reduce to writing that part of the deponent's said evidence which is herein before recited. And the deponent further saith, that the evidence aforesaid so given by him, the deponent, as aforesaid, is in all particulars true. And the deponent further saith, that the said James Stuart, since he came into office as Attorney General as aforesaid, has not, in any instance, to the knowledge of the deponent, deviated from the course pursued by his predecessors in office, as to the description of crimes prosecuted by him in the Court of King's Bench. And the deponent further saith, that he passed his clerkship to entitle him to admission to the Bar in this Province, in the office of the Honorable Jonathan Sewell, Esq. now Chief Justice, and formerly Attorney-General of this Province, in and between the years one thousand eight hundred and three and one thousand eight hundred and eight; and that the same course pursued by the said James Stuart, in the prosecution of larcenies and misdemeanors as aforesaid, was observed by the said Jonathan Sewell, in the criminal prosecutions of that nature, carried on by him in the Court of King's Bench. And further the deponent saith not.

(Signed) W. GREEN.

*Sworn at the City of Quebec, this 4th day of  
April, 1831, before me,*

(Signed) EDWD. BOWEN, J.B.R.

True Copy, J. STUART.

## No. 3.

*Affidavit of JOHN KENT WELLES, Esquire.*

## PROVINCE OF LOWER CANADA.

DISTRICT OF } To Wit:  
QUEBEC. }

JOHN KENT WELLES, of the Borough of William-Henry, Esquire, maketh oath—That he now is, and hath been, for upwards of nineteen years past, Agent for His Majesty's Seignior of Sorel. That he was acquainted with the proceedings which took place at the contested election for the said Borough, which was held there in the month of July, in the year of our Lord one thousand eight hundred and twenty-seven, and was daily at the Poll, during the continuance of the said election. That he was present, when some of the voters were objected to by James Stuart, Esquire, one of the Candidates, and were required to take the oath of qualification, and did hear the said James Stuart explain to them the consequences of their taking a false oath. That neither on these occasions, nor on any occasion whatever did he hear the said James Stuart state, or in any manner intimate, that he, as Attorney General, had alone the power of prosecuting persons for Perjury, and that he would prosecute those who voted against him, for that offence, while those who voted for him had nothing to fear; nor did he ever hear the said James Stuart utter any words of such import, or that could bear such an interpretation; nor did he ever hear, either during or subsequently to the said election, that such words, or words of similar import, had ever been used by the said James Stuart, until, to his surprise, he heard Mr. Wolfred Nelson on his examination as a witness on the trial of Antoine Aubeant for Perjury, at the said election, in the Court of King's Bench at Montreal, in March last, declare that such words had been used by the said James Stuart. That the Deponent does not think that such extraordinary words could have been used at the said election, without their being made a subject of conversa-

tion then or subsequently, so as to have reached his ears. That the Deponent was principally referred to by the said James Stuart, during the said election, for information, respecting the qualification of the voters, and in every instance, within the knowledge of the Deponent, in which the right of a person desirous of voting for the said James Stuart was doubtful, the particulars of his qualification was inquired into by the said James Stuart, and if his right was found defective he was told so and his vote was not accepted. That, to the knowledge of the Deponent, several persons who had voted at former elections for the said Borough, and were desirous of voting for the said James Stuart, having submitted to him, during the election and towards its close, the particulars of their supposed right, were informed by him, that they were without the necessary qualification to entitle them to vote, and that he therefore declined their votes, which in consequence were not given. That among these persons, whose votes were so rejected, there were a Mr. John Carter, a gentleman residing in the Borough, who had voted at former elections, and who was willing to swear to his qualification, and one Gingras and two or three other persons, whose names the Deponent does not now recollect, who were also willing to swear to their qualification. And to the Deponent's knowledge, the said Gingras, and the said two or three other persons, at the most critical period of the election, and when a single vote might decide the result, by the desire of the said James Stuart, were sent to a distance from the Borough, at his expense, lest the partisans of the adverse Candidate (some of whom were known not to be scrupulous on this head) might induce them to swear and vote for him. That the expense of sending these persons out of the way, amounting to eight dollars, was paid by the deponent and reimbursed to him by the said James Stuart, after the election was over. That the Deponent was present when several of the voters, who have since been prosecuted for Perjury, were sworn to their qualification, and heard the said Wolfred Nelson encourage them, in the most pressing manner, to take the oath, assuring them that no harm would happen to them from it, and that he would stand between them and harm. And the Deponent further saith, that it is within his knowledge, that in

objecting to the qualification of voters, as well as in his attempts to make them aware of the consequences of taking a false oath, the said James Stuart experienced the greatest difficulty in obtaining a hearing, by reason of the loud clamours and the interruption proceeding from the adverse Candidate and his partisans, and the encouragement given to the voters to take the oath at all hazards. And further this Deponent saith not.

(Signed) JOHN K. WELLES.

*Sworn at the City of Quebec, the 21st day of  
May, 1830, before me,*

(Signed) EDWD. BOWEN, J.B.R.

True Copy, J. STUART.

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No. 4.

*Affidavit of ROBERT JONES, Esquire.*

DISTRICT OF }  
MONTREAL. }

ROBERT JONES, of the Borough of William-Henry, in the District of Montreal, in the Province of Lower Canada, Esquire, Lieutenant Colonel in the Militia of the said Province, and also one of His Majesty's Justices of the Peace for the said District, maketh oath, that he has resided for upwards of fifty years in the said Borough, and was particularly acquainted with the proceedings which took place at the election of a representative for the said Borough, held there in July, one thousand eight hundred and twenty-seven. That he, the deponent, attended the hustings daily, during the continuance of the said election, and was seldom absent therefrom. That he, the deponent, was present when Antoine Aussant, François Vandal, Nicholas Buckner, Joseph Claprood, and others, who presented themselves as voters at the said election, were objected to by James Stuart, Esquire, one of the candidates, and were required to take the oath of qualification to entitle

them to vote. That the said James Stuart, when the said oath was about to be administered to the said persons, used every exertion in his power to make them acquainted with the nature of the said oath, and the penalties they would incur if they swore falsely, but experienced great difficulty in doing so, in consequence of clamorous interruptions proceeding from the adverse candidate, Mr. Nelson, and several of his partisans, who loudly and vehemently urged the said persons to take the oath, the said Mr. Nelson assuring them in the most earnest manner that no harm could or should happen to them from doing so, and that he, the said Mr. Nelson, would stand between them and harm: and the deponent recollects that it was stated by the said James Stuart, with reference to the impropriety of the these assurances, that the Pillory was one of the punishments annexed to the offence of Perjury, and that Mr. Nelson could not and would not supply their places there. That the said James Stuart repeatedly represented to the Returning Officer, Mr. Crebassa, the necessity there was that he should explain to these individuals, they being illiterate and extremely ignorant, the nature of the oath to be taken, that they might not unguardedly become liable to the penalties of Perjury, but the said Returning Officer refused to do so, saying it was his duty to administer the oath and nothing more, without any explanations on his part, and he did accordingly administer the oath to them, amidst the clamorous outcries of Mr. Nelson and several of his partisans, urging them to take the oath, and the assurances of indemnity on the part of Mr. Nelson as aforesaid. That the said James Stuart did tell the said persons, by whom the oath of qualification was taken as aforesaid, that if they swore falsely they would be prosecuted for perjury, and this was said by him as it would have been said by any other candidate under like circumstances:—but the said James Stuart did not say that he, as Attorney General, would prosecute them for perjury, or that he, as Attorney General, had alone the right of prosecuting for perjury, or that those who voted for him had nothing to fear, while those who voted against him would be prosecuted for perjury, nor did the said James Stuart, on the occasion of administering the oath to the said persons, use any words of such import, or that could



bear such an interpretation, nor did the deponent ever hear, either during or subsequently to the said election, that any such language had ever been used by the said James Stuart until, to his great surprise, being present in Court, he heard the said Mr. Nelson, on his examination as a witness, on the trial of the said Antoine Aussant for perjury, in March last, declare that such language had been used by the said James Stuart. That deponent having been long resident at the Borough of William-Henry, and having himself represented the said Borough in several Parliaments, was frequently referred to by the said James Stuart, for information respecting the qualification of persons about to vote, or who it was expected would vote at the said election; and in every instance, within the knowledge of the deponent, in which the right of a person desirous of voting for the said James Stuart was deemed questionable, the particulars of his supposed qualification were inquired into by the said James Stuart, and if his right to vote was found defective, he was told it was so and his vote was not accepted. That the deponent is well acquainted with one François St. Germain, who voted for the said James Stuart at the election. That the said St. Germain told the deponent, the day before he voted, that he intended to vote for the said James Stuart, and grounded his right to vote on a reservation, which he said he had made in a Deed of Gift to his son of a house in the Borough, by which he had reserved to himself the usufruct for his life of two apartments in the house, over and above a life-rent; and the deponent also knows that the said St. Germain, before he gave his vote, went to the lodgings of the said James Stuart, to consult him as to his right to vote, under the reservation which he stated he had made in the Deed of Gift to his son as aforesaid. That the conduct of the said James Stuart, throughout the said election, in every instance in which it came within the knowledge of the deponent, was marked by fairness and a strict regard to propriety. That to the deponent's knowledge, persons who had voted at former elections and were desirous of voting for the said James Stuart, were interrogated by him as to the nature of their supposed qualification, and he being of opinion that they had no right to vote, declined their votes, which were not given. That the deponent has also a

knowledge that several persons, who were desirous of voting for the said James Stuart, and were willing to take the oath of qualification, towards the close of the election, were sent out of the way to a distance from the Borough, by the desire and at the expense of the said James Stuart, after he had inquired into their supposed qualification, and had ascertained that they had no legal right to vote:—and the reason then assigned by the said James Stuart for this step was, that the partisans of the adverse candidate, not being scrupulous as to means, might, if these persons were not sent out of the way, induce them to vote for him. And further this deponent saith not.

(Signed) R. JONES.

*Sworn at William-Henry, this 9th day  
of June, 1830, before me,*

(Signed) ANTHONY VON IFFLAND, J.P.

True Copy, J. STUART.

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No. 5.

*Affidavit of* ANTHONY VON IFFLAND, *Esquire.*

DISTRICT OF }  
MONTREAL. }

ANTHONY VON IFFLAND, of the Borough of William-Henry, in the District of Montreal, in the Province of Lower Canada, Esquire, Doctor of Physic, and one of His Majesty's Justices of the Peace for the said District of Montreal, maketh oath, that he has a particular knowledge of the circumstances which occurred at the election of a representative for the said Borough, held there in July, one thousand eight hundred and twenty-seven, he the deponent having been present daily at the hustings, and having only occasionally absented himself from them. That the deponent was present when Antoine Aussant, Antoine Hus, alias Cournoyer, Nicholas Buckner, François Vandal, and others who presented themselves

as voters at the said election, were objected to by James Stuart, Esquire, one of the candidates, and were required to take the oath of qualification to entitle them to vote. That the said James Stuart, previous to the administering of the oath to the said persons last named, endeavoured to make them acquainted with the nature of the oath they were about to take, and the penal consequences they would incur by swearing falsely, but found great difficulty in doing so, by reason of the interruptions he experienced from the adverse candidate, Mr. Nelson, and several of his partisans, who with vehemence and loud clamour urged the said persons, and particularly the said Aussant, Hus, alias Cournoyer, Buckner, and Vandal, to take the oath; the said Mr. Nelson assuring them, in the most positive terms, that no harm should or could happen to them from doing so, and that he, the said Mr. Nelson, would stand between them and harm; in reference to which assurances, and by way of putting the said persons on their guard, it was stated by the said James Stuart, that the pillory was one of the punishments annexed to the offence of perjury, and that Mr. Nelson could not and would not supply their places there. That the said James Stuart, to prevent the effect of the assurances and solicitations proceeding from the adverse candidate, repeatedly represented to the Returning Officer, Mr. Crebassa, the necessity there was that he should explain to these individuals, they being extremely ignorant, the nature of the oath to be taken, that they might not be unguardedly involved in the penalties of perjury, but the said Returning Officer refused to do so, saying it was his duty to administer the oath and nothing more, without any explanation on his part, and he did accordingly administer the oath to them, amidst the loud and importunate requests of the said Mr. Nelson frequently repeated, that they would take the oath and his assurances of indemnity as aforesaid. That the said James Stuart did tell the said persons, by whom the oath of qualification was taken as aforesaid, that if they swore falsely they would be prosecuted for perjury, and this was said by him in such terms as would have been used by any other candidate under like circumstances; but the said James Stuart did not say that he, as Attorney General, would prosecute them for perjury, or that he, as Attorney General, had alone the right to

prosecute for perjury, or that those who voted for him had nothing to fear, while those who voted against him would be prosecuted for perjury; nor did the said James Stuart, on the occasion of administering the oath to the said persons, use any words of such import or that could bear such an interpretation; nor did the deponent ever hear, either during or subsequently to the said election, that any such language had ever been used by the said James Stuart; until, to his great surprise, he learnt that the said Mr. Nelson, on his examination as a witness on the trial of said Antoine Aussant, for perjury, in March last, had declared that such language had been used by the said James Stuart when the said Antoine Aussant took the oath of qualification as aforesaid. That the deponent, having been long resident at the Borough of William-Henry, was frequently referred to by the said James Stuart, for information respecting the qualification of persons about to vote, or who it was expected would vote at the said election, and in every instance, within the knowledge of the deponent, in which the right of a person desirous of voting for the said James Stuart was deemed questionable, the particulars of his supposed qualification were inquired into by the said James Stuart, and if his right to vote was found defective, he was told it was so and his vote was not accepted. That the deponent is well acquainted with one François St. Germain, who voted for the said James Stuart at the said election. That, on the first day of the election, being the twenty-fifth day of July, the deponent met the said François St. Germain, when he signified a desire to vote for the said James Stuart, and, upon the deponent's inquiring into the nature of his qualification, he told the deponent that in the gift which he had made to his son of his house in the Borough, he had reserved to himself the usufruct during his life of two apartments in the said house, over and above a life-rent, and he referred the deponent to Colonel Jones for the truth of this fact. That the deponent thereupon advised the said François St. Germain to consult the said James Stuart, as to the sufficiency of his qualification to entitle him to vote; and, the next morning, having again met the said François St. Germain, he told the deponent that he had seen the said James Stuart at his lodgings, and that the said James Stuart had told him, that

under the reservation he had made he could vote. That the deponent felt anxious to ascertain the precise terms of the reservation which the said François St. Germain alledged he had made, and went to the office of Mr. Crebassa, Public Notary, by whom it was understood that the deed of gift from the said St. Germain to his son had been passed, for the purpose of seeing the said deed, but he could not obtain access to it. That the conduct of the said James Stuart, throughout the said election, in every instance in which it came within the knowledge of the deponent, was marked by fairness and a strict regard to propriety; and the deponent has a personal knowledge, that several persons desirous of voting for the said James Stuart, and willing to take the oath of qualification, among whom were one Gingras and one Bellan, at the most critical period of the election, and when a single vote might determine the result of it, were sent to a distance from the Borough, by the desire and at the expense of the said James Stuart, lest the partisans of the adverse candidate might induce them to vote for him; it being well known, that some of them were not scrupulous as to the legal sufficiency of votes, or the means of obtaining them. And further the deponent saith not.

(Signed) ANTHONY VON IFFLAND, M.D.

*Sworn at William-Henry this 10th day of  
June, 1830, before me,*

(Signed) R. JONES, J. P.

True Copy, J. STUART.

That further, the above-said deponent maketh oath, that at the election of a representative for the said Borough of William-Henry, held in the month of August, in the year one thousand eight hundred and twenty-four, one Catherine Lamère took the oath of qualification to entitle her to vote at the said election, under an honest belief on her part, that she had the requisite legal estate, during the temporary absence of her husband, Paul Levalle, to qualify her as a voter, and she did after taking the said oath vote for Norman Fitzgerald Uniack, Esquire, then

His Majesty's Attorney General for the Province of Lower Canada, and one of the Candidates at the said election. That at the election for a representative for the said Borough, held there in July, one thousand eight hundred and twenty-seven, she the said Catherine Lamère signified to the said deponent her desire of voting for the said James Stuart, Esquire, then one of the candidates, but, on explaining to the said James Stuart the particulars of her supposed qualification, her vote was declined as contrary to law, and therefore not given at the said election.

(Signed) ANTHONY VON IFFLAND, M.D.

*Sworn at William-Henry, this 10th day of  
June, 1830, before me,*

(Signed) R. JONES, J. P.

True Copy, J. STUART.

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No. 6.

*Affidavit of Mr. RICHARD BURKE.*

DISTRICT OF }  
MONTREAL. }

RICHARD BURKE, of the Borough of William-Henry, in the District of Montreal, Gentleman, maketh oath, that he was particularly acquainted with the proceedings which took place at the election for the said Borough, in the month of July, one thousand eight hundred and twenty-seven, having attended the poll daily during the continuance of the said election. That he knows François St. Germain, who at that time resided in the said Borough. That previous to the said François St. Germain having voted at the said election, he told the deponent that he would explain the nature of his qualification to James Stuart, Esquire, one of the candidates at the said election, which qualification, he then also told the deponent, consisted in a life-estate in two apartments, making part of a dwelling-house

which he had given to his son, which said two apartments he had reserved to himself for his life, by the deed of gift which he had executed to his said son.

That, to the deponent's knowledge, the said James Stuart was scrupulous in the examination of the qualification of persons desirous of voting for him, whose right to do so was thought in any way doubtful, and the deponent has a personal knowledge that several persons desirous of voting for the said James Stuart, and willing to take the oath, were prevented by him from doing so, after he had examined their papers, and had ascertained from them that they had not a legal right to vote. That the deponent has a perfect knowledge, that one François Thibault, who appeared willing to take the oath, and vote for the said James Stuart, having submitted the papers establishing his supposed qualification to the said James Stuart, on the day the election ended, and a short time before the closing of the poll, was told by the said James Stuart, that he had no right to vote, and his vote was declined. That one Joseph Claprood, who voted at the said election for Mr. Nelson, and who has since been convicted of perjury, for having then falsely sworn to a qualification to enable him to vote, came to the deponent's house, during the election, and before he voted as aforesaid, and offered to the deponent to vote for the said James Stuart; but the deponent, knowing that he had no right to vote, and that the said James Stuart constantly declined illegal votes, rejected his offer, and the said Claprood then went away, and was afterwards induced to vote for the said Mr. Nelson. That the deponent was present when different individuals, offering their votes at the poll, were objected to by the said James Stuart, and also when some of the persons, who have since been prosecuted for perjury at the said election, took the oath of qualification and voted for the said Mr. Nelson. That, neither on those occasions nor at any time during the said election, did this deponent hear the said James Stuart say, or in any manner intimate, that he, as Attorney General, had alone the power of prosecuting for perjury, and that he would prosecute those who voted against him for that offence, while those who voted for him had nothing to fear; nor did he ever hear the said James Stuart utter any words of such import, or that could bear any



such an interpretation; nor did he ever hear, to his knowledge, either during or subsequently to the said election, that such words, or words of similar import, had ever been used by the said James Stuart, until, to his surprise, he learnt that Mr. Wolfred Nelson, the candidate above mentioned had, on his examination as a witness on the trial of Antoine Aussant, for perjury at the said election, declared that such words had been used by the said James Stuart. That the deponent thinks, that if such extraordinary language had been used by the said James Stuart, it would have been made the subject of conversation, and must have reached his ears. That the conduct of the said James Stuart, throughout the said election, was marked by the greatest fairness; and although intimately acquainted with the proceedings of the said election, from the first to the last, the deponent never observed the slightest deviation, on the part of the said James Stuart, from such fairness of conduct. That the said James Stuart, in his attempts to put voters on their guard against taking the oath, without a legal qualification, was on several occasions, to the knowledge of the deponent, interrupted by the said Mr. Nelson, the adverse candidate and his partisans, who urged such voters to take the oath, the said Mr. Nelson at the time assuring them that he would stand between them and harm. And further this deponent saith not.

(Signed) RICHD. BURKE.

*Sworn at William-Henry, this 8th day of  
June, 1830, before me,*

(Signed) ANTHONY VON IFFLAND, J.P.

True Copy, J. STUART.

## No. 7.

*Affidavit of Mr. JOHN CARTER.*

DISTRICT OF }  
MONTREAL. }

JOHN CARTER, of the Borough of William-Henry, in the District of Montreal, in the Province of Lower Canada, Gentleman, maketh oath, that at the election of a representative for the said Borough, held in the month of August, in the year one thousand eight hundred and twenty-four, he, the deponent, took the oath of qualification to entitle him to vote at the said election, under an honest belief on his part that he had the requisite legal estate to qualify him as a voter, and he did, after taking the said oath, vote for Norman F. Uniacke, Esquire, one of the candidates at the said election. That, at the election of a representative for the said Borough, held there in July, one thousand eight hundred and twenty-seven, he, the deponent, was desirous of voting for James Stuart, Esquire, one of the candidates at the said election, and signified to the said James Stuart such his desire, at the same time explaining to the said James Stuart the particulars of his supposed qualification. That the said James Stuart, after learning these particulars, told the deponent that he could, by reason of them, claim no right to vote, and with civility declined the deponent's vote, which was therefore not given at the said election. And further the deponent saith not.

(Signed) JOHN CARTER.

*Sworn at William-Henry, this 10th day of  
June, 1830, before me,*

(Signed) R. JONES, J.P.

True Copy, J. STUART.

## No. 8.

*Affidavit of Mr. MICHAEL GLACKMEYER.*

DISTRICT OF }  
MONTREAL. }

MICHAEL GLACKMEYER, of Berthier, in the District of Montreal, Gentleman, maketh oath, that he acted as Clerk of the Poll at an election held at the Borough of William-Henry, in July, one thousand eight hundred and twenty-seven, for the election of a representative to serve for the said Borough in the Provincial Parliament.—That he was present when Antoine Aussant, Antoine Paul Hus dit Cournoyer, Nicholas Buckner, François Vandal, and others, took the oath required by law as to their qualification to vote.—That, when the said persons last named offered themselves as voters, they were objected to by James Stuart, Esquire, one of the Candidates of the said Election, on the ground of their not being qualified to vote.—That the said James Stuart, as far as he had it in his power to do, explained to the said persons their want of right to vote, and the penalties they would incur if they swore falsely; but the said James Stuart did not, either on the occasions of the swearing of the said persons, and of the giving of their votes, nor at any other time, to the knowledge of the deponent, declare or say, that, as Attorney General, he alone had a right to prosecute persons guilty of perjury, and that those who voted for him had nothing to fear, whilst those who voted against him would be prosecuted, nor did he use any words of such import; that the said James Stuart seemed desirous of putting the said persons above named on their guard, and explained to them the consequences they would incur by swearing falsely, and nothing more; at the same time telling them, that if they did, notwithstanding, swear falsely, they would be prosecuted for it.

(Signed) ML. GLACKMEYER.

*Sworn at Montreal, this 11th day of  
March, 1830, before me,*

(Signed) SAMUEL GALE.

True Copy, JAMES STUART.

## No. 9.

*Affidavit of Mr. LOUIS PAUL.*

DISTRICT DE }  
MONTREAL. }

LOUIS PAUL, Habitant de la Paroisse de Sorel, ayant été assermenté sur les Saints Evangiles, depose et dit, qu'il s'est trouvé présent à l'élection tenue au Bourg de William-Henry, au mois de Juillet, mil huit cent vingt sept, pour y élire un représentant pour le dit Bourg, dans le Parlement Provincial. Que le deposant étoit présent quand les nommés Antoine Aussant et Antoine Hus dit Cournoyer, depuis poursuivis pour parjure à la dite élection, se sont présentés pour donner leur voix comme voteurs à la dite election. Que le déposant a entendu James Stuart, Ecuier, un des dits candidats, prévenir les dits Aussant et Cournoyer, qu'ils n'avoient pas droit de voter à la dite élection, et que s'ils le faisoient, ils seroient sujets à être poursuivis pour parjure. Que le dit James Stuart a prié l'Officier Rapporteur d'expliquer aux dites personnes leur défaut de droit, à fin d'empêcher qu'ils ne s'exposassent aux mauvaises suites du parjure, mais l'Officier Rapporteur a répondu que son devoir se bornoit à les faire prêter serment, et en effet leur a administré le serment requis en tel cas. Que sur les tentatifs que le dit James Stuart a fait de faire comprendre aux dits Aussant et Cournoyer qu'ils n'avoient pas droit de voter à la dite election, l'autre candidat, Mr. Nelson, les a assuré qu'ils avoient droit de voter, et qu'il les garantiroit de toutes conséquences qui pourroient s'ensuivre, et en même tems le dit Mr. Nelson et ses partisans alors presents ont engagé les dits Aussant et Cournoyer de prêter le serment.—Que le déposant étoit aussi présent quand Nicholas Buckner, depuis poursuivi pour parjure, s'est présenté la première fois, pour voter à la dite élection, et a entendu les explications qui ont été faites au dit Buckner, alors, pour le faire comprendre qu'il n'avoit pas droit de voter, lesquelles ont paru convaincre le dit Buckner, qu'il ne pouvoit pas voter, et il s'est retiré sans donner sa voix.—Que ni dans les occasions ci dessus mentionnées, ni

en aucune autre, il n'a entendu Mr. James Stuart dire, que ceux qui voteraient contre lui sans en avoir le droit, seroient poursuivis pour parjure, tandis que ceux qui voteroient pour lui n'avoient rien à craindre, et il n'a jamais entendu dire au dit James Stuart qu'étant Procureur Général il pourroit en agir ainsi:—Il n'a jamais entendu dire non plus, au dit James Stuart, que sa charge de Procureur General donnoit à lui seul le droit de faire des poursuites pour parjure, et que ceux qui voteroient pour lui n'avoient rien à craindre de ce côté là. Et le deposant dit de plus qu'il n'a pas entendu proferer aucunes paroles par le dit James Stuart, à l'occasion des votes données par les dits Aussant et Cournoyer, et des explications faites au dit Buckner comme susdit, ni en aucun autre tems, aux quelles on pourroit donner un tels sens ou signification.—Que le dit James Stuart dans les occasions susdites, n'a fait que prévenir les dits Aussant, Cournoyer, et Buckner, des mauvaises suites qui s'ensuivroient, s'ils faisoient un faux serment, et rien de plus, et c'étoit avec difficulté qu'il a pû se faire entendre, en voulant le faire, à cause de l'opposition violente que faisoit le parti opposé aux explications qu'il vouloit donner.

(Signé) LOUIS <sup>Sa</sup> X PAUL.  
Marque.

*Assermenté à Montréal, le 11e  
Mars, 1830, devant moi,*

(Signé) SAMUEL GALE, J.P.

True Copy, J. STUART.

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No. 10.

*Affidavit of Mr. BENJAMIN JOHN SCHILLER, of the City of  
Montreal, Gentleman.*

DISTRICT DE {  
MONTREAL. }

BENJAMIN JEAN SCHILLER, de Montreal, dit District, l'un des Huissiers de la Cour du Banc du Roi, dans et pour le dit District, ci-devant Capitaine dans le troisième

bataillon de la milice incorporée, pendant la dernière guerre avec les Etats de l'Amerique, après serment prêté sur les Saints Evangiles, depose et dit, que dans le terme criminel de la dite Cour, qui se tint en Mars, mil huit cent trente, Henry Crebassa, Ecuier, Notaire Public, demeurant au Bourg William-Henry, autrement appelé Sorel, étoit à Montreal susdit comme l'un des temoins de la dite Cour, à ce que croit le deposant. Que vers la fin du dit terme criminel, le dit Henry Crebassa, que ce deposant connoit familièrement depuis plusieurs années, ayant rencontré le deposant à la Maison de Justice, lui dit que lui, le dit Henry Crebassa, avoit été une couple de fois chez le Procureur General (sçavoir l'Honorable James Stuart) pour signer un affidavit, mais qu'il n'avoit pas trouvé Monsieur le Procureur General à son logis. Que le deposant croit, que le dit Henry Crebassa lui dit ceci, pour que lui, le deposant, le repetât au dit Procureur General, que lui, le deposant, en sa qualité d'huissier, étoit dans l'habitude de voir souvent. Que le lendemain, ou sur lendemain, le dit Procureur General, étant sur le point de partir pour le District des Trois Rivières, remit au dit deposant l'affidavit ci-annexé, lui disant en même temps de se rendre au dit Bourg William-Henry, et de faire signer le dit affidavit au dit Henry Crebassa, après que celui-ci auroit été dûement assermenté devant le Lieut. Col. Jones, l'un des Juges de Paix de sa Majesté pour le dit District de Montreal. Que le deposant s'étant rendu chez le dit Lieut. Col. Jones lui donna le dit affidavit à lire; qu'ayant achevé de le lire, il lui fût lû deux fois par une des personnes lors présentes. Que le dit Crebassa declara alors bien comprendre le contenu du dit affidavit, et ajouta qu'il n'avoit aucune objection de le signer, mais qu'il vouloit auparavant voir si ce qui y étoit dit des voteurs dont les noms y étoient mentionnés, s'accordoit ou non avec son dit livre de poll, et que si l'affidavit se trouvoit à cet égard conforme avec son dit livre de poll, il reviendrait dans l'après midi le signer. Que le dit Crebassa voulût alors emporter le dit affidavit avec lui, mais que le deposant le lui refusa, parceque le deposant sçavoit parcequ'il avoit vû à l'election, que le dit Crebassa étoit plutôt intéressé pour le candidat adverse que pour le dit Procureur General. Que sur la promesse du dit Crebassa, le dit deposant laissa l'affidavit chez le dit Juge de Paix, et s'en retourna à

**Montreal.** Que le deposant peut dire, sous serment, que l'affidavit ci-annexé est le même affidavit dont il fût chargé dit est, parcequ'il en connoit bien l'écriture, et qu'au Jurat d'icelui se trouvent les mots "William-Henry," qui furent ajoutés à icelui, au dit Bourg, en sa présence, aussi bien que la date ou le jour exprimé par les chiffres "17." Le deposant ajoute qu'il à revû avec surprise le dit affidavit, sans être revêtu de la signature du dit Crebassa. Et le deposant n'a plus rien dit.

(Signé) B. J. SCHILLER.

*Assermenté pardevant moi, le deuxième jour de Mai,  
1831, à Montreal susdit,*

(Signé) BENJAMIN HOLMES, J.P.

True Copy, J. STUART.

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*Affidavit referred to in the foregoing Affidavit of Mr. BEN-  
JAMIN JOHN SCHILLER.*

DISTRICT DE }  
MONTREAL. }

HENRY CREBASSA, Ecuier, Notaire Public au Bourg de William-Henry, ayant été assermenté sur les Saints Evangelles, depose et dit, qu'il a rempli la charge d'Officier Rapporteur à l'election qui s'est tenue au dit Bourg, au mois de Juillet, mil huit cent vingt sept, pour y élire un représentant pour le dit Bourg dans le Parlement Provincial. Que le deposant, en sa qualité d'Officier Rapporteur comme susdit, a fait prêter serment aux nommés Antoine Aussant, Antoine Hus dit Cournoyer, Nicholas Buckner, François Vandal, et autres, avant de recevoir leurs votes à la dite election. Qu'au moment où les dites personnes susnommées se sont présentées pour donner leurs voix, James Stuart, Ecuier, un des candidats, a objecté à la reception d'icelles comme n'étant pas recevables, faute de qualification de leur part. Que le dit James Stuart a prié le deposant d'expliquer aux dites personnes ci-dessus nommées leur défaut de qualification, et les consequences auxquelles elles



s'exposeroient en prêtant le serment requis en tel cas, ce que le deposant a décliné de faire, croyant que son devoir se bornoit à leur faire prêter le dit serment, et pas autre chose. Que le dit James Stuart là-dessus, en autant que l'opposition qu'y a fait le candidat adverse et ses partisans le lui a permis, a expliqué aux dites personnes ci-dessus nommées leur défaut de droit de voter, et leur a aussi fait savoir la punition à laquelle ils s'exposeroient en faisant un faux-serment. Mais le dit James Stuart, en aucune des occasions susdites, où les dites personnes susnommées ont prêté serment comme susdit, ni en aucun autre tems pendant la dite election, à la connoissance du deposant, n'a dit ni donné à entendre qu'en sa qualité de Procureur General, il avoit seul le droit de poursuivre les personnes qui se rendroient coupables de parjure, ni que ceux qui voteroient contre lui seroient poursuivis, tandis que ceux qui voteroient pour lui n'auroient rien à craindre. Et le deposant dit de plus qu'il n'a aucune connoissance que pendant le cours de la dite election, des expressions pareilles, ni aucunes expressions auxquelles on pourroit donner un tel sens, aient été proferées ou employées par le dit James Stuart. Qu'il a paru au deposant que le dit James Stuart, en ce qu'il a dit au dites personnes susnommées, à l'occasion des serments qu'ils ont fait à la dite election, a voulu les mettre sur leur garde, en les prévenant des pénalités auxquelles elles s'exposeroient en faisant de faux serments, et pas autre chose.

*Assermenté à William-Henry, ce 11 Mars, 1830,  
devant moi.*

The foregoing affidavit, not signed or sworn to, is the paper, writing, or affidavit referred to in the affidavit of George Okill Stuart, Esquire, sworn to before the Honourable James Kerr, Esquire, on the 14th day of May, 1831.

(Signed) J. KERR,  
G. O. STUART.

*Affidavit of GEORGE OKILL STUART, Esquire.*

## PROVINCE OF LOWER CANADA.

DISTRICT OF } To wit:  
QUEBEC.

GEORGE OKILL STUART, of the City of Quebec, in the Province of Lower Canada, Esquire, Advocate, maketh oath, that he, the deponent, being clerk to James Stuart, Esquire, His Majesty's Attorney General for the Province of Lower Canada, was employed by the said James Stuart, in that capacity, during the criminal term of His Majesty's Court of King's Bench, held at Montreal, in the month of March, in the year of our Lord one thousand eight hundred and thirty.—That he, the deponent, was present in the lodgings of the said James Stuart, at Rasco's Hotel, on or about the tenth day of March, in the year last aforesaid, at the close of the said term, when Henry Crebassa, of the borough of William-Henry, Esquire, Public Notary, being there, expressed his readiness to make an affidavit to contradict certain facts that had been stated, a day or two before, by Wolfred Nelson, on his examination as a witness, on the trial of one Antoine Aussant for perjury, upon which the said James Stuart reduced to writing the statement of the said Henry Crebassa in the form of an affidavit, the rough draft of which, after it had been read over, and approved by the said Henry Crebassa, was given to the deponent, with directions to make a fair copy of it.—That the paper-writing hereunto annexed, purporting to be an affidavit of the said Henry Crebassa, not signed or sworn to, is the fair copy of the rough draft of an affidavit, made by the deponent as aforesaid, and is a true copy of the said rough draft.—That the said paper-writing, being such fair copy, was, in the presence of the deponent, carefully and deliberately read over by the said James Stuart to the said Henry Crebassa, who declared it to be perfectly correct, and expressed his desire to swear to it immediately.—That the deponent received the said paper-writing from the hands of the said James Stuart, in the presence of the said Henry Crebassa, with directions to go with the said Henry

Crebassa before one of the Judges of His Majesty's Court of King's Bench, in order that he might swear to it; and the deponent did accordingly go with the said Henry Crebassa to the Court House for that purpose. That the only Judge whom the deponent and the said Henry Crebassa found at the said Court House was the Honourable Mr. Justice Pyke, who was then on the Bench, and could not be interrupted for the purpose of taking the said affidavit, and thereupon the said Henry Crebassa said he would call again at two o'clock in the afternoon at the lodgings of the said James Stuart, for the purpose of going with the deponent, before a Judge, to swear to the said affidavit.—That the said Henry Crebassa did not again come to the lodgings of the said James Stuart, for the purpose last aforesaid, either during that day or any subsequent day, while the said James Stuart remained at the said City of Montreal; and the deponent, in the course of the same day, learnt that the said Henry Crebassa had left town, on his return to William-Henry. And further the deponent saith not.

(Signed) G. O. STUART.

*Sworn at the City of Quebec, this 14th day of  
May, 1831, before me,*

(Signed) J. KERR, J.B.R.

True Copy, J. STUART.

### No. 11.

*Affidavit of JOSEPH ALLARD, of Sorel, Labourer.*

DISTRICT DE }  
MONTREAL. }

JOSEPH ALLARD, de Sorel, Journalier, ayant fait serment, dépose et dit comme suit :—J'étois le 29 d'Aoust dernier, de bon matin, sur le Quai de M. See à Sorel, quand Louis Marcoux, du même lieu, Contracteur de Bois pour les Steam-Boats, est venu au quai, et m'a demandé si je voulois déposer

contre Camerere.—Je lui ai fait réponse, “Non, M. Marcoux, je ne veux point :” il a répliqué, “Viens donc.” Après quelques importunités, je l’ai accompagné à sa maison où il a versé du rum dans un “tumbler.”—Ensuite, je suis parti pour aller chez moi : en revenant au bout de quelque tems, j’ai passé devant sa porte : il m’a appelé, et m’a fait rentrer de nouveau, et alors m’a demandé de déposer contre Pierre Lusignan, ce que j’ai refusé : il m’a ensuite dit, “Va-t-en chez M. Jean Crebassa, querir une pinte de rum.”—J’ai été querir le rum, et l’ayant livré au dit Marcoux, il m’a donné encore un verre de rum. Ensuite, il m’a dit, “Va querir Noel Guillot pour déposer avec toi contre le bon homme St. Germain.”—J’ai été chercher Guillot, comme il m’avoit dit ; et, étant de retour, Guillot et moi nous nous sommes trouvés ensemble avec le dit Marcoux. Alors Marcoux m’a dit, “Fais toi donc un honneur de déposer contre Camerere.” J’ai dit alors à Marcoux, “L’homme n’a pas fait serment sur le poll.” “Eh bien,” disoit Marcoux, “c’est bon, nous lui ferons payer dix louis d’amende.” Tout de suite, après avoir ainsi parlé, Marcoux s’est mis à écrire ce que je lui disois (du moins, il me disoit que c’étoit cela qu’il faisoit.) Il m’a demandé entre autres choses qui étoient les voisins de Camerere. Je lui ai dit que c’étoit le bon homme Paul Lefebvre et Baptiste St. Jean. Marcoux m’a dit que non, que c’étoit marqué sur le livre de poll autrement, que c’étoit marqué sur le livre de poll, que John Hall et Pierre Credit étoient les voisins de Camerere. J’ai dit à M. Marcoux, “Prenez garde, parceque les voisins sont ceux que je vous ai dit.” M. Marcoux a répondu, “Ils verront leurs erreurs.” Enfin M. Marcoux a complété son écrit, qui contenoit à ce que je croyois ma deposition. Mais il ne m’en a pas fait lecture dans sa maison, et je ne lui ai jamais dit que Camerere avoit fait serment au poll. Ayant complété son écrit, Marcoux m’a demandé d’aller dans l’Isle de M. Morrison, où j’ai été avec lui et une douzaine d’autres personnes, parmi lesquelles se trouvoient M. Jean Crebassa, M. Kimbert, Guillot, &c. &c. Etant arrivé à l’Isle, j’avois tant bû de rum que je ne sçavois pas à peine ce que je faisois. Peu de temps après, Mons. Douaire Bondy est arrivé à l’Isle, et je me rappelle qu’il m’a demandé si toutes les depositions étoient prêtes. Mons. Marcoux lui a

repondu que non, mais que bientôt elles seroient prêtes. Au bout de quelque temps, j'ai été appelé pour faire serment à la deposition, Mons. Kimbert s'est mis (à ce que j'ai cru) en devoir de la lire. Je ne me rappelle pas à present du contenu de ce qu'on me lisoit, mais je me rappelle d'avoir dit que "son nom n'étoit pas Jean Camerere; à quoi Mons. Marcoux a répondu, "C'est nous autres qui marquons cela." Dans le temps j'étois bien pris de boisson, et ne comprenois pas que je faisois serment de la verité de ce qu'on me lisoit, et j'étois hors d'état de pouvoir en juger.

Il y a à-peu-près vingt jouts que le dit Marcoux m'a rencontré sur le quai de Mons. Molson, et il m'a dit, "Tu feras bien de te sauver pour ce que t'a fait à Berthier" (voulant dire dans l'Isle de Mons. Morrison, qui est à Berthier.) J'ai répondu, "Si vous avez fait quelque vilaine affaire, je n'en suis pas l'auteur, et je ne me sauverai pas." Dit de plus qu'il ne savait pas écrire.

*Affirmé devant moi, ce 14 Nov. 1827.*

(Signé) SAMUEL GALE, J.P.

True Copy, J. STUART.

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No. 12.

*Copy of an Indictment for Subornation of Perjury against*  
LOUIS MARCOUX.

PROVINCE OF LOWER CANADA.

DISTRICT OF } To wit:  
MONTREAL. }

Be it remembered, that at a Session of Oyer and Terminer and General Gaol Delivery of our Sovereign Lord the King, of and for the District of Montreal in the Province of Lower Canada, begun and holden at the Court House in the City of Montreal in the said District of Montreal on Friday the second

day of November in the eighth year of the reign of our Sovereign Lord George the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, before the Honourable James Reid, Esquire, Chief Justice of His Majesty's Court of King's Bench for the District of Montreal, Louis Charles Foucher, George Pyke, and Norman Fitzgerald Uniacke, Esquires, Justices of the same last-mentioned Court, John Richardson, Toussaint Pothier, Samuel Gale, and Louis Guy, Esquires, and others their fellows, Justices of our said Lord the King, assigned by Letters Patent of our said Lord the King under the Great Seal of the said Province, to the same Justices above named, and others their fellows, Justices of our said Lord the King, or any two or more of them, directed, of whom one of them the said James Reid, Louis Charles Foucher, George Pyke, and Norman Fitzgerald Uniacke, amongst others in the said Letters Patent named our said Lord the King willed to be one, to inquire more fully the truth by the oath of good and lawful men of the said District of Montreal, and by other ways, methods, and means, by which they should or might better know, as well within liberties as without, by whom the truth of the matter might be better known and inquired into, of all treasons, misprisions of treason, insurrections, rebellions, counterfeittings, clippings, washings, false coinings, and other falsities of the money of the United Kingdom of Great Britain and Ireland, and all other kingdoms and dominions whatsoever, and of all murders, felonies, man-slaughters, killings, burglaries, rapes of women, unlawful meetings and conventicles, unlawful uttering of words, assemblies, misprisions, confederacies, false allegations, trespasses, riots, routs, retentions, escapes, contempts, falsities, negligences, concealments, maintenances, oppressions, champerty, deceits, and all other evil doings, offences, and injuries whatsoever, and also the accessaries of the same, within the district aforesaid as well within liberties as without, by whomsoever, and in what manner soever done, committed, or perpetrated, and by what person or persons, when, how, and after what manner, and of all articles and circumstances concerning the premises, and of every of them, or any one or more of them, in any manner whatsoever,

and the said treasons and other the premises, according to the laws and customs of England, and of the said Province of Lower Canada for this time, to hear and determine, and also Justices of, our said Lord the King, under his Great Seal of the said province to the same justices above named, and others their fellows, or any two or more of them directed, of whom one of them the said James Reid, Lous Charles Foucher, George Pyke, and Norman Fitzgerald Uniacke, amongst others in the said last-mentioned Letters Patent named our said Lord the King willed to be one, the gaol of our said Lord the King of his said District of Montreal of the prisoners therein being, to deliver, by the oath of Henry M'Kenzie, Alexander M'Kenzie, Jules Quesnel, Edward Martial Leprohon, Louis F. de Chambault, John Jamieson, Thomas Barron, Charles Stuart, Louis Barbeau, Jacques L. de Martigny, John Yule, Arthur Webster, John Porteous, George D. Arnoldi, William Smith, Charles Morrison, Isaac Valentine, Joseph Roy, Jacques P. S. de Beaujeu, William Molson, Samuel Gerrard, and George Gregory, Esquires, good and lawful men of the District of Montreal aforesaid, now here sworn, and charged to inquire for our said Lord the King for the body of the said district, touching and concerning the premises in the said two several Letters Patent mentioned, it is presented in manner and form as in the Bill of Indictment to this schedule annexed is contained.

MONTREAL. To wit :

The jurors for Our Lord the King upon their oath present, That heretofore, to wit, on the twenty-fifth day of July, in the eighth year of the reign of our Sovereign Lord George the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, at the Borough of William-Henry in the parish of St. Peter of Sorel, in the county of Richelieu, in the district of Montreal, an election of one burges of the said Borough to represent the said Borough in the Assembly of this Province, to be holden at the City of Quebec, on the twenty-fifth day of August then next ensuing, was duly had and held, by virtue of a certain writ of election of



our said Sovereign Lord the King before them duly issued, and directed to the returning officer of the said Borough, under and in pursuance of a certain Instrument of our said Sovereign Lord the King, under the Great Seal of the Province, bearing date at the Castle of St. Lewis, in the City of Quebec, the fifth day of July, in the year of our Lord one thousand eight hundred and twenty-seven, for summoning and calling together an assembly in and for this Province, at which said election James Stuart and Wolfred Nelson were candidates to represent the said Borough, as such Burgess as aforesaid, in the said Assembly, and a poll for taking the votes of the Electors of the said Borough for the purpose of electing such Burgess as aforesaid, was then and there duly granted and held; and while the said election was had and held as aforesaid, afterwards, to wit, on the said twenty-fifth day of July, in the eighth year aforesaid, one Jean Cameraire appeared as a Freeholder at the said election and poll, in the said Borough of William-Henry, and then and there polled and gave his vote as such Freeholder, without any objection having been made to his right of voting, by or on the part of either of the said Candidates, and without any oath having been required from him, as to his qualification to vote as aforesaid.—And the Jurors aforesaid, upon their oath aforesaid, do further present that Louis Marcoux, late of the said Borough of William-Henry, in the parish aforesaid, in the county aforesaid, in the district aforesaid, gentleman, being a person of an evil mind and wicked disposition, and not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and wickedly and maliciously devising and intending unjustly to vex and aggrieve the said Jean Cameraire, and to subject him to the punishment, pains, and penalties by the laws of this Province provided for persons guilty of Perjury, on the twentieth day of August, in the eighth year aforesaid, at the parish of Berthier, in the County of Warwick, in the district of Montreal aforesaid, did falsely, corruptly, knowingly, and wilfully solicit, suborn, and procure one Joseph Allard, to go before Joseph Douaire Bondy, Esquire, then and yet one of the Justices of the Peace of our said Lord the King, assigned to keep the peace of our said Lord the King in and for the said District of Montreal, and also to hear and determine divers

felonies, trespasses, and other misdemeanors in the said District committed, and charge the said Jean Cameraire with Perjury, and make oath that the said Jean Cameraire had then lately before at the said election, been guilty of Perjury. And the Jurors aforesaid, upon their oath aforesaid, do further present, that in consequence, and by the means, encouragement, and effect of the wicked and corrupt subornation and procurement of the said Louis Marcoux, he, the said Joseph Allard, afterwards to wit, on the said twentieth day of August, in the eighth year aforesaid, at the parish of Berthier aforesaid, in the county aforesaid, in the district aforesaid, did go in his proper person before the said Joseph Douaire Bondy, being such Justice as aforesaid, and then and there having sufficient power and authority to administer an oath, and take the deposition of the said Joseph Allard hereinafter mentioned, and the said Joseph Allard was then and there sworn and took his corporal oath, before the said Joseph Douaire Bondy, on the Holy Gospel of God ; and the said Joseph Allard, being so sworn as aforesaid, by the means, and in consequence, of the said wicked solicitation, subornation, and procurement of the said Louis Marcoux, did then and there, upon his oath as aforesaid, in a written deposition then and there taken by and before the said Justice, touching the charge of Perjury by the said Joseph Allard, so as aforesaid made against the said Jean Cameraire, falsely, wickedly, maliciously, and corruptly say, depose, and swear (amongst other things) in substance and to the effect following ; that is to say, that Jean Cameraire, of William-Henry and district aforesaid, invalid (meaning the said Jean Cameraire hereinbefore named) on the twenty-fifth day of the month of July, one thousand eight hundred and twenty-seven, did take his oath, and swear before Henry Crebassa, Esquire, Returning Officer of the said Borough of William-Henry, on the Royal Square (to wit, on a square called the Royal Square, at and in the said Borough) at an Election there, for electing a Member to represent the said Borough in the Assembly of Lower Canada, that he the said Jean Cameraire was qualified to vote at the said Election as proprietor, as being possessed for his own proper use and benefit, in virtue of a legal title in the said Borough, of a Lot of Ground and Dwelling-house thereon, joining on one side to

John Hall, and on the other to Joseph Pierre Credit, and that the said Lot of Ground and Dwelling-house thereon belonging to him was of the yearly value of five pounds, sterling, that is to say, five pounds, eleven shillings, and one penny farthing, currency, or more, over and above all rents and charges payable upon or in respect of the same, and that the said Jean Cameraire (meaning the said Jean Cameraire first above named) had been really in possession of the said lot of ground and dwelling-house thereon, or of the receipt of the rents and profits thereof, for his own use, during six calendar months and more, immediately preceding the said Election, and that the said Jean Cameraire (meaning the said Jean Cameraire first above mentioned) in swearing as aforesaid, had been and was guilty of wilful Perjury: Whereas, in truth and in fact, the said Jean Cameraire, hereinbefore and in the said written deposition of the said Joseph Allard named, did not, on the twenty-fifth day of July, one thousand eight hundred and twenty-seven, or at any other time, take his oath, or swear before the said Henry Crebassa, Returning Officer for the said Borough of William-Henry, on the Royal Square, or elsewhere, at any Election for electing a Member to represent the said Borough of William-Henry in the Assembly of Lower Canada, or on any other occasion, that he the said Jean Cameraire was qualified to vote at the said Election, or at any election whatever, as proprietor and being possessed for his own proper use and benefit or otherwise, in virtue of a legal title or otherwise, in the said Borough, of a lot of ground and dwelling-house thereon, joining on one side to John Hall, and on the other to Joseph Pierre Credit, or of any other lot of ground and dwelling-house, and that the said lot of ground and dwelling-house thereon belonging to him, was of the yearly value of five pounds sterling, that is to say, five pounds, eleven shillings, and one penny farthing currency, or more, over and above all rents and charges payable upon or in respect of the same, and that the said Jean Cameraire had been really in possession of the said lot of ground and dwelling-house thereon, or of the receipt of the rents and profits thereof for his own use, during six calendar months or more, or any other time immediately preceding the said Election:—And whereas, in

truth and in fact, he the said Jean Cameraire, hereinbefore and in the said written deposition named, did not, on the twenty-fifth day of July, one thousand eight hundred and twenty-seven, or before or after that day, take any oath whatever, or swear in any manner whatever, before the said Henry Crebassa, Returning Officer for the said Borough of William-Henry, touching his qualification to vote at the said Election, or touching and concerning the matters and things in the said written deposition contained, or touching or concerning any other matter or thing whatsoever; and whereas, in truth and in fact, he the said Jean Cameraire, hereinbefore and in the said deposition named, was not, by swearing as aforesaid, or in any manner or way, guilty of wilful perjury. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said Louis Marcoux, on the said twentieth day of August, in the eighth year aforesaid, at the parish of Berthier aforesaid, in the county aforesaid, in the district aforesaid, did falsely, corruptly, knowingly, wilfully, and wickedly suborn and procure the said Joseph Allard to commit wilful and corrupt perjury, in and by his oath aforesaid, before the said Joseph Douaire Bondy so then and there having lawful and competent authority to administer the said oath, to the great displeasure of Almighty God, in contempt of our said Lord the King and his laws, to the evil and bad example of all others in the like case offending, and against the peace of our said Lord the King his Crown and dignity.

(Signed) J. STUART, Attorney General.

(Signed) J. DELISLE, C. R. O. & T. & G. G. D.

A True Copy, J. DELISLE, C. K. Crown.

(Indorsed)

COURT OF OYER AND TERMINER AND GENERAL  
GOAL DELIVERY, MONTREAL.

*November Session, 1827.*

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THE KING  
v.  
LOUIS MARCOUX.

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INDICTMENT  
*for*  
SUBORNATION OF PERJURY.

A True Bill,      H. MACKENZIE, Foreman.

*Witnesses,*      HENRY CREBASSA, Esq.  
                      NARCISSE CREBASSA.  
                      MICHAEL GLACKMEYER.  
                      JEAN CAMERAIRE.  
                      JOSEPH DOUAIRE BONDY, Esq.  
                      JOSEPH ALLARD.  
                      PIERRE JOS. CHEVREFILS, Esq.

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No. 13.

*Affidavit of Mr. FRANÇOIS GAZAILLE dit St. GERMAIN, late  
of the Borough of William-Henry, now of the Parish of St.  
Remi, in the District of Montreal, Yeoman.*

DISTRICT DE }  
MONTREAL. }

FRANCOIS GAZAILLE dit St. Germain, ci-devant  
notable cultivateur, residant à William-Henry, en la Seigneurie  
de Sorel, district de Montreal, province du Bas Canada, main-

tenant de la paroisse de St. Remi, dit district, après serment prêté sur les Saints Evangiles, depose et dit, que lors de l'élection qui se tint au dit Bourg, en Juillet, mil huit cent vingt sept, le deposant y residait. Que James Stuart, Ecuier, Procureur General de Sa Majesté, pour la province du Bas Canada, et Wolfred Nelson, de St. Denis, dit district, médecin, étoient candidats à la dite election. Que par un certain acte fait et passé à William-Henry, le quinzième jour de Mars, mil huit cent vingt deux, pardevant les nommés Crebassa et Rolland, Notaires Publics, le deposant et Charlotte Meneclier, sa femme, de lui dûement autorisée, firent une donation en faveur de François Gazaille dit St. Germain, leur fils, de tous et chacuns leurs biens meubles et immeubles, consistant en trois emplacements, situés au dit Bourg, dont deux avec maisons et autres bâtisses dessus construites, et le troisième sans aucun bâtiment, et encore une terre de deux arpens de front sur vingt plus ou moins de profondeur, située en la dite Seigneurie de Sorel. Que le deposant est parfaitement persuadé, et croit dans son âme et conscience, qu'il a l'usufruit pour la vie de l'une ou de l'autre des dites maisons bâties sur deux des dits emplacements, et ce en vertu d'une reserve ou convention expresse, qu'il croit aussi en son âme et conscience avoir été inserée et être contenue à cet effet au dit acte de donation. Qu'il croit que ce droit lui appartient si bien, qu'il n'est pas au pouvoir de son dit fils de vendre l'une ou l'autre des dites maisons, sans son consentement pendant sa vie. Que depuis la passation du dit acte de donation il s'est toujours crû propriétaire pendant sa vie de celle des dites maisons, qu'il lui plairoit de choisir pour en avoir l'usufruit et disposer du dit usufruit, comme bon lui sembleroit, et ce en vertu de la dite reserve. Que le soir du premier jour de la dite election, qui eût lieu comme dit est en Juillet, mil huit cent vingt sept, le dit Wolfred Nelson vint chez le dit deposant au dit Bourg, lui, le dit deposant, habitant alors une des dites maisons, ainsi qu'il l'avoit habité depuis une couple d'années, et ce tout seul avec sa femme, en vertu du dit droit d'usufruit, et avec un domestique à leur service. Que le dit Wolfred Nelson demanda là et alors au deposant de lui donner sa voix comme candidat; qu'il lui demanda en même tems comment il avoit donné ses biens. Que le deposant lui repondit,

qu'il s'était réservé par son acte un droit d'usufruit pour sa vie d'une des dites deux maisons à son choix. Que la dessus le dit Wolfred Nelson lui dit qu'il avoit droit de voter, et que si on lui faisait quelque difficulté au poll, lui le dit Wolfred Nelson, saurait bien l'en tirer. Que le deposant ne promit pas au dit Wolfred Nelson de voter pour lui. Que le lendemain matin le deposant ayant formé la resolution de voter pour le dit James Stuart, fût, pour se satisfaire de plus en plus de son droit de voter, et se consulter à ce sujet, trouver le dit Henry Crebassa, comme c'étoit lui qui avoit passé le dit acte de donation, mais que le dit Henry Crebassa refusa de lui donner aucune connoissance ou conseil à ce sujet, et dit au deposant de faire comme il voulait. Que la dessus, le dit deposant, partit satisfait de son droit de voter, et fût au poll pour donner sa voix. Que le dit Henry Crebassa, comme Officier Rapporteur, lui ayant demandé pour qui il donnait sa voix, celui-ci repondit qu'il la donnait pour le dit James Stuart. Qu'alors une difficulté s'éleva entre les deux candidats. Que pendant icelle le deposant se retira de la table. Qu'il y retourna peu de temps après, et qu'il fit le serment requis pour se qualifier pour voter, dans la sincère et ferme croyance que le dit acte de donation contenait une reserve et stipulation de la nature ci-dessus mentionnée, croyance qui existe encore fermément en son âme et conscience. Que lui le deposant fit le dit serment librement, et entièrement de lui-même. Que ce fût le dit Crebassa qui lui donna à baiser les Saints Evangiles. Qu'il n'hésita pas un instant à les baiser, parcequ'il ne sentit repugnance quelconque à prendre le serment, en autant qu'il étoit convaincu qu'il en avoit le droit, à cause de la dite reserve et clause du dit acte de donation, et qu'il avoit déjà exercé le même droit, à la sollicitation du dit Wolfred Nelson, en faveur de deux members pour le Comté de Richelieu dans lequel est situé le dit Bourg. Que lui le dit deposant est positif à affirmer sous son dit serment que lui, le dit James Stuart, ne lui a jamais pris la main pour la mettre sur les Saints Evangiles. Qu'il croit que le nommé Burke étoit là present alors, mais qu'il ne se rappelle pas les noms d'autres personnes. Le dit deposant dit de plus que des deux maisons ci-dessus mentionnées, l'une valait alors environ vingt louis, cours actuel, de loyer par année, et l'autre de trente



six à quarante piastres. Le dit deposant dit de plus qu'il n'a jamais parlé au dit James Stuart depuis qu'il lui a donné sa voix, et qu'il ne se rappelle pas de lui avoir jamais parlé auparavant de la lui donner. Que lui, le dit James Stuart, lui dit au poll qu'en vertu de la dite reserve et du dit usufruit, il avait certainement droit de voter. Le deposant ajoute qu'il a soixante et dix neuf ans, mais qu'il jouit encore de toutes ses facultés, et il se porte bien; se rappelle bien tout ce qui s'est passé à la dite election, en mil huit cent vingt sept, lorsqu'il donna sa voix, et qu'il n'a donné cette deposition que pour rendre hommage à la verité et à la justice. Le deposant declare ne sçavoir signer.

*Assermenté devant moi, ce 6e jour de Mai, 1831, cette deposition ayant été par moi-même lue et expliquée au dit deposant avant que de lui administrer le serment.*

(Signé) P. T. PINSONAUT, J. P.

True Copy, J. STUART.

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No. 14.

*Affidavit of FRANÇOIS GAZAILLE dit ST. GERMAIN, the younger, late of the Borough of William-Henry, now of the Parish of St. Remi, in the district of Montreal, Shop-Keeper.*

DISTRICT DE }  
MONTREAL. }

FRANÇOIS GAZAILLE dit ST. GERMAIN, fils, de la paroisse de St. Remi, dit district, province du Bas Canada, Marchand, ayant prêté serment sur les Saints Evangelles, dit que François Gazaille dit St. Germain, et Charlotte Meneclier, parties à un certain acte de donation passé en sa faveur, le quinze de Mars, mil huit cent vingt deux, devant Crebassa et Rolland, Notaires Publics, sont ses père et mère. Que, depuis la passation du dit acte, ses père et mère ont habité

long temps, seuls, avec leur domestique, une des maisons mentionnées au dit acte de donation. Que, depuis la passation d'icelui, son dit père a toujours été dans la ferme croyance, et l'est encore, qu'il avoit et qu'il a droit d'usufruit pour la vie de l'une ou de l'autre des dites maisons; que son dit père est dans la ferme croyance qu'il peut reprendre possession de l'une ou de l'autre des dites maisons, quand bon lui semblera; et que ce n'est que l'amitié paternelle qui a porté son dit père à laisser sa demeure à Sorel, pour venir demeurer à Saint Remi susdit avec lui et son épouse. Le déposant dit de plus, que des deux dites maisons l'une vaut environ vingt louis, cours actuel, et l'autre environ trente six ou quarante piastres de loyer par année, ou plutôt c'étoit là leur valeur annuelle pendant que ses dits père et mère en habitoient une. Le dit déposant dit de plus, que lui, le dit déposant, se croyoit, et se croit encore obligé, d'après ce qui s'est passé entre lui et son dit père, lors de la passation du dit acte, de laisser l'usufruit pour sa vie de celle des dites maisons qu'il a habitée comme dit est; et ce quoique les conventions passées et faites de vive voix entre lui le déposant et ses dits père et mère, ne soient pas exprimées au dit acte, comme et conformément et aussi amplement comme les obligations verbales contractées par le dit déposant, au sujet du droit d'usufruit pour la vie, en faveur des dits donateurs; et que si le déposant, lors de la lecture du dit acte par le dit notaire, n'a pas fait corriger le dit acte, c'est qu'en consultant son amour et son respect filial, il savoit que ces obligations seroient toujours observées par lui d'une manière sacrée.

(Signé) FRS. ST. GERMAIN.

*Assermenté pardevant moi, ce 6 Mai, 1831, le  
dit déposant ayant déclaré avoir lui-même  
lû la susdite deposition, et qu'elle contient  
la vérité.*

(Signé) P. T. PINSONAUT.

True Copy, J. STUART.

## No. 15.

*Affidavit of ANTHONY VON IFFLAND, Esquire.*

## PROVINCE OF LOWER CANADA.

DISTRICT OF } To wit:  
QUEBEC.

ANTHONY VON IFFLAND, of William-Henry, in the Province of Lower Canada, Esquire, Doctor of Physic, maketh oath, that he was examined on the twenty-second day of February now last past, before a Committee of the House of Assembly of Lower Canada, sitting under the name of a Committee of Grievances, which Committee, at the time of the deponent's examination, consisted of Messrs. Labrie, Bourdages, Heney, Lafontaine, and Duval.—That, soon after his examination, having heard various particulars spoken of as making part of his evidence before the said Committee, which particulars he had never stated, and were untrue, he called on James Stuart, Esquire, His Majesty's Attorney General, to learn from him what course he ought to take to obtain the correction of the evidence ascribed to him; and the said James Stuart, without entering into any explanations with the deponent, told him, that if his answers had been untruly or incorrectly reported to the House of Assembly, the fit course to be taken was, by petition to the House of Assembly, to pray that an opportunity might be afforded to him for the correction of the errors and inaccuracies which had been committed, in taking down and reporting his answers.—That the deponent, from the late period of the session at which he became acquainted with the incorrectness of the evidence ascribed to him as aforesaid, and from other circumstances, could not succeed in obtaining the correction of the evidence contained in the Report of the said Committee.—And the deponent further saith, that in the evidence ascribed to him in the report of the said Committee, styled "The Second Report of the Committee of Grievances," there has been a suppression of material facts and circumstances which made

part of the deponent's answers to the questions put to him by the said Committee; and the said evidence, in a number of particulars, is incorrect, and different from the evidence really given by the deponent before the said Committee. And the deponent further saith, that in that part of the evidence ascribed to him in the said Report, which relates to one Gazaille dit Germain, whose real name is St. Germain, there has been a suppression of material facts and circumstances which made part of the evidence given by him, the deponent, before the said Committee, and there is also untruth and incorrectness in the said evidence, in various parts, as therein reported.—The deponent stated before the said Committee, that he was not present when Gazaille dit Germain took the oath and voted, and could not, therefore, know whether he showed reluctance to take the oath or not: But the deponent also stated facts, from which it was to be inferred, that the said Germain took the oath of his own free will, and that he did so upon an alledged reservation of a life estate, the existence of which estate was not denied or doubted at the time he voted; and these facts have been entirely suppressed in the evidence ascribed to the deponent as aforesaid.—The facts which the deponent stated before the said Committee, with respect to the said Germain, and which have been suppressed as aforesaid, are the following: viz. “ That the said Germain called upon  
“ the deponent the day before he voted, and after mentioning  
“ his intention to vote for James Stuart, Esquire, one of the  
“ Candidates, stated also the nature of his qualification, which  
“ he represented to consist in the usufruct for life, or a life-  
“ estate, in part of the house in the Borough, which he had  
“ given to his son, by deed of gift, executed before Mr. Crebassa,  
“ Public Notary: the next morning, the said Germain again  
“ called upon the deponent, and informed him that he had just  
“ seen the said James Stuart, who had told him that if he  
“ (Germain) had reserved a life-estate as he represented he had  
“ done, he would have a right to vote. That the deponent  
“ being desirous of assuring himself of the terms of the reserva-  
“ tion, stated by Germain to be contained in the deed of gift to  
“ his son, immediately after went to the office of the said Mr.  
“ Crebassa, for the purpose of seeing the said deed of gift, and

“ applied for the perusal of it to the said Mr. Crebassa, who  
“ refused to let him see it. That soon after the deponent met  
“ the said Germain, who persisted in the confident assertion  
“ that the said deed of gift contained such a reservation as he  
“ had stated, and that he would go and vote for the said James  
“ Stuart; and, in the course of the same morning, the deponent  
“ heard that the said Germain had voted for the said James  
“ Stuart. That the deponent did not hear any doubts ex-  
“ pressed of the truth of the fact stated by the said Germain,  
“ as to the said reservation, until five or six days after the  
“ election was over, when the said Germain, in conversation  
“ with the deponent, renewed his assertion that he had reserved  
“ to himself a life-estate as above mentioned.”

And the deponent further saith, that the said facts so suppressed as aforesaid are in all particulars true, and were stated by the deponent, in answer to the seventh question put to him by the said Committee.

And the deponent further saith, that the said Germain, at the time of giving his vote as aforesaid, was an entire stranger to the said James Stuart, to whom he had never spoken (as the deponent learnt from the said Germain) till he went to call on the said James Stuart, the morning he gave his vote as aforesaid. And the deponent further saith, that the said Germain has always borne the character of an honest, respectable man, and his connexions also are respectable, and that the said Germain, before and at the time of giving his vote as aforesaid, would not have been deemed capable of telling, much less of swearing to an untruth knowingly.

And the deponent further saith, that the evidence ascribed to the deponent in the said Report of the Committee of Grievances, in what respects certain affidavits said to have been sent to Sorel, by a Mr. Schiller, does not correspond with the evidence actually given by the deponent before the Committee, and would convey an impression contrary to truth. The real facts, with respect to these affidavits, as represented by the deponent before the said Committee, are the following:—

In consequence of untrue statements which, recently before, on the trial of one Aussant for perjury, had been made respecting the conduct of the said James Stuart, at the election for

Sorel, drafts or outlines of several affidavits to contradict such statements, were, on the part of the said James Stuart, transmitted to Sorel, accompanied by instructions that they were to receive any alterations and corrections that might be necessary to render them exactly conformable to the knowledge of the persons making them, and to truth. One of these affidavits was intended for Mr. Crebassa, who had been returning officer, who told the deponent that it had been prepared at his desire, when at Montreal, and that he had called on the said James Stuart, to swear to the said affidavit, but had been prevented from doing so, by finding him too much engaged to be spoken to.—And the deponent further saith, that the said Mr. Crebassa declined making the said affidavit when required to do so at William Henry, not on the ground of any inaccuracy in the said affidavit, but, because, as he stated, his brother and son were unwilling that he should make the said affidavit, and had told him not to do so.—And the deponent further saith, that with respect to the proposed affidavit of the said Mr. Crebassa, as well as two or three others he received in the early part of June last, a letter from the said James Stuart, dated the 2nd June, 1830, which he annexes to this affidavit, and to which he refers, as containing the instructions under which the said affidavits were to be taken.

And the deponent further saith, that having, in compliance with the said letter, renewed his request to the said Mr. Crebassa to be informed whether he would make the said affidavit, and, if not, that he would state his reason for not doing so, he was told by the said Mr. Crebassa, that he would make his own affidavit and send it down to the said James Stuart.

And the deponent further saith, that among the particulars untruly stated in the evidence ascribed to the deponent as aforesaid, are the following: viz.—The deponent in the said evidence is made to state that the said James Stuart used *threats* to voters; where the deponent did not state, before the said Committee, that the said James Stuart had used threats to voters. The deponent, in the said evidence, is also made to say, that by the said affidavits, the said James Stuart *pretended* that he had not used violence to electors, whereas no such language was, or could have been, used by the deponent, inasmuch

as it was within his knowledge, and he had stated before the said Committee, that no violence had been used by the said James Stuart.—The deponent, in the said evidence is also made to say, that he swore to affidavits with “*alterations* ;” whereas he stated before the said Committee, that he had sworn to them with “*additions* ;” the deponent having added to the said affidavits the mention of facts which had been omitted in them.—The deponent in the said evidence, is also made to state, that persons had refused to swear to affidavits which had been sent to Sorel, whereas no such refusal occurred, except in the case of Mr. Crebassa, as above-mentioned. The deponent, in the said evidence, is also made to state, that abusive words had been used by the said James Stuart to the said Mr. Crebassa; whereas the deponent did not so express himself, but only stated that he heard the said James Stuart say, that the said Mr. Crebassa acted stupidly which was said with reference to the mistakes committed by Mr. Crebassa in confounding the oaths to be taken by tenants and proprietors, and substituting the one for the other ; and the deponent could not state before the said Committee, and cannot now state, to whom the said James Stuart addressed himself.—The deponent, in the said evidence, is also made to state, that the said James Stuart threatened Mr. Welles, that he would complain of him to the Governor; whereas the deponent in his evidence, as really given by him, stated that the said James Stuart, being a stranger and unacquainted with the qualifications of the voters, relied on the assistance of Mr. Welles, being agent for the seignior of Sorel, to give him the requisite information on this head ; and, finding that Mr. Welles absented himself from the poll, by which he was deprived of such information, he remonstrated with Mr. Welles on his conduct, and insisted that he should not absent himself from the poll, at the same time stating if he did so, he would report him to the Governor. The deponent, in the said evidence, is also made to state, that he had a knowledge that certain letters had passed between the Curé and the Governor ; whereas he stated before the Committee, that he had no knowledge of any such fact, except that derived from a report of the Committee of Grievances in 1829.



And the deponent further saith, that he did not and could not have stated, before the said Committee, any particulars of misconduct on the part of the said James Stuart, at the said Election, or any circumstances from which such misconduct could be inferred, inasmuch as the conduct of the said James Stuart, throughout the said Election, in so far as the deponent became acquainted with it (and he was intimately acquainted with all the proceedings which took place at the said Election) was not only altogether unexceptionable, but meritorious in discountenancing and preventing, as far as he could, all irregularities and improprieties, as well as all acts of violence.—And further the deponent saith not.

(Signed) A. VON IFFLAND, M.D.

*Sworn at the City of Quebec, this 2nd day of  
May, 1831, before me,*

(Signed) J. KERR, Judge of the Court of King's  
Bench, Quebec.

True Copy, J. STUART.

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*Copy of the Letter referred to in the foregoing Affidavit.*

*Quebec, 2nd June, 1830.*

DEAR SIR,

IN conformity with what was suggested when I had the pleasure of seeing you at William-Henry, a few days since, I now send to you, enclosed, Affidavits of the facts which it is understood can be sworn to by yourself and by Messrs. Burke and John Carter, together with a Mem. of particulars which it would be proper to introduce into the Affidavits of Mrs. Graves and St. Germain, if they should be within their knowledge and accord with truth. I also return to you the Affidavit of Mr. Crebassa. You would oblige me to recall to his recollection these facts, viz. that when I saw him at Montreal, after

the trial of Aussant, he told me that the facts contained in the Affidavit were within his knowledge; that he would call on me at two o'clock in the course of the same day, and make Affidavit of them, which Affidavit I was to prepare in the mean time. That he did not call on me as he promised, or if he did, he did not announce himself, so as to admit of the Affidavit being made; that he told Schiller that he intended to make the Affidavit, but had been prevented by learning that I was occupied, &c. In recalling these facts to Mr. Crebassa, you will oblige me by putting the question to him *distinctly*, whether he will or will not make the Affidavit, and if not, by asking him to specify the reason of his refusal. It is of course understood, that the Affidavit proposed to be made is subject to all alterations and corrections on his part, so as to render it entirely conformable to his knowledge of facts and to the truth. I am extremely sorry to be under the necessity of giving you so much trouble; but, with your knowledge of the circumstances which have rendered it necessary, I am persuaded you will deem any apology on my part superfluous. I have only to add, that a great obligation will be conferred on me by a minute attention to the subject of this letter, which will at all times be acknowledged, by yours very truly,

(Signed) J. STUART.

*This Letter referred to in the Affidavit of Anthony  
Von Iffland, Esquire, made before me this 2nd  
day of May, 1831,*

(Signed) J. KERR, I. B. R. Quebec.  
A. VON IFFLAND, M.D.

True Copy, J. STUART.

## No. 16.

*Copy of a REPORT made by JAMES STUART, Esquire, His Majesty's Attorney General for the Province of Lower Canada, to His Excellency SIR JAMES KEMPT, Administrator of the Government of that Province, respecting certain Prosecutions for Libels, pending undetermined in the Courts of Justice of the said Province.*

To His Excellency Sir James Kempt, Knight Grand Cross of the most honourable Military Order of the Bath, Lieutenant-General, and Commander-in-Chief of His Majesty's Forces in the Provinces of Lower Canada and Upper Canada, Nova Scotia and New Brunswick, and their several Dependencies, and in the Island of Newfoundland, Administrator of the Government in the Province of Lower Canada, &c. &c. &c.

*May it please your Excellency,*

I have been honoured with your Excellency's commands, signified in Mr. Secretary Cochran's letter of the 24th September, requiring me to make a report of the prosecutions for libel, which have been instituted by me on the part of the Crown, since November last, and of the present state of the proceedings, together with any information deemed necessary for your Excellency, on this subject.

In obedience to your Excellency's commands, I have the honour to state, that all the prosecutions, referred to by your Excellency, have originated in indictments found by the Grand Juries of the Districts of Quebec and Montreal, respectively; and that the first three of them were instituted in a Court of Oyer and Terminer and General Gaol Delivery, held in the latter of these Districts, in November, 1827.

The adoption of any legal proceedings to restrain the licentiousness in which some of the conductors of Newspapers had indulged, had been long, and probably in the estimation of the sober and discreet part of the community, too long delayed. It was not, indeed, till after it was evident that the evil was greatly increased by this forbearance, and that a check to it was

urgently required, that resort was had to legal measures, and for these the sanction of a Grand Jury was taken.

Before this step was adopted, the editors of these newspapers, with their auxiliary contributors, not satisfied with the free, temperate discussion of public measures, had erected themselves into censors of the Government, and of the Administration of Justice, and were in the habit of pronouncing judgment erroneously against both, in terms of indecent disrespect. In these publications, the conduct and measures of Government, and the proceedings of the Courts of Justice were grossly misrepresented and calumniated, and the acts of both within the limits of their legal power, in most important particulars, were held up to the public as illegal and unconstitutional, and in such language, as was calculated to invite opposition to their authority; while the person at the head of the Government was openly aspersed, vilified, and made the object of indecent personal attack. Of the urgent necessity of putting a stop to these publications, no doubt could be entertained, as Government, however leniently and justly administered, could not continue to subsist, if it could be thus perseveringly attacked with impunity. In this country also, the injurious consequences to be apprehended from these libels, it is fit to remark, were the greater, as the mass of the population are profoundly ignorant, and may easily, for this reason, be made to imbibe unfounded distrust and prejudices against the Government; under the influence of which they might be hurried into a criminal opposition to its authority, or long retain a sense of wrong, which was never done. That an extreme degree of hardihood had been acquired by the authors of these libels, will be considered as sufficiently evinced by the fact of their not having suspended publications of this description, even while a Criminal Court was sitting, to which they could be made immediately amenable. It was during the sitting of the Court of Oyer and Terminer, and at the place at which its session was held, that the most offensive of the libels now alluded to were published; and some of them were even directed against the Court itself, containing the most criminal misrepresentation of its proceedings, and arraigning its justice, without the slightest reason.

In order to make your Excellency acquainted with the libels selected for prosecution, I shall beg leave to mention the prosecutions in the order in which they occurred; and, for the libellous matter which has been made the subject of prosecution, will refer your Excellency to the annexed Appendix, in which a copy of it will be found.

The first of these prosecutions is founded on an article contained in the *Canadian Spectator*, a newspaper published at Montreal, of the 7th November, 1827, for which an indictment was found against Mr. Waller, the Editor, and Mr. Duvernay the Printer of that paper, in the Court of Oyer and Terminer and General Gaol Delivery, held there in that month; and the matter charged as libellous in the indictment will be found in the Extract, (No. 1,) in the annexed Appendix. In explanation of this prosecution, it may be proper to observe, that the Editor of the paper now referred to, came hither from Ireland some years since, and, being afterwards in distressed circumstances, was hired to conduct that paper, which has been, since its first establishment, the organ through which a party, acting in opposition to His Majesty's Government in the Provincial House of Assembly, has manifested its sentiments, and by which it has been supported. The Editor himself is without stake or interest in the country; the language he holds would seem to be the language of his employers, by whom he is paid; and although published in English, the paper is intended to influence the mass of the French Canadian population, through whom its pernicious contents are made to circulate, by infusion into French papers, and by oral communication.—The article was published a short time before the expected meeting of the Provincial Legislature. The “conciliation” made mention of, and treated with so much contempt, was the conciliation of the three branches of the Legislature, and it is in relation to this anticipated conciliation, that the writer gives vent to the *tirade* of virulent abuse which follows, and which terminates in giving the character of a “*nuisance*” to His Majesty's Colonial Government;—a brief and concentrated form of libel, it must be admitted,—quite intelligible to the most ignorant of the persons for whose information it was intended,—and, as applied to a government still possessed of any efficacy, I believe to be almost

without example. In using this disgraceful term, the writer would seem to have sought, in a single expression, to unite, in the most offensive libel, a direct incitement to insurrection ; for, if the Government were to be considered a *nuisance*, as represented by him, that nuisance, like every other nuisance, it is fair to infer, was to be abated : and, as if to render his meaning unambiguous, he immediately adds, that if the country would co-operate with firm and decisive measures, it would be speedily extinguished.

Among the vague and general charges conveyed in this article against His Majesty's Government, admitting of no answer, is one of a specific nature, which, in a variety of insulting forms, had been made in the same paper, and could not fail to make a strong impression on an ignorant population. The Colonial Government is charged with reviving military ordinances, against the plainest rules of legal construction. To render intelligible this gross libel on the Government, it is necessary to mention, that in the twenty-seventh and twenty-ninth years of His late Majesty's reign, two ordinances were passed by the Legislature of the country, at that period, one of which is intituled, " An Ordinance for better regulating the Militia of this Province, and rendering it of more general utility towards the preservation and security thereof ;" and the other of which is intituled, " An Ordinance to explain and amend the first mentioned Ordinance." These Ordinances were permanent laws, for regulating the Militia of the Province, the operation of which was suspended by several successive statutes, containing a temporary repeal of them, and substituting, during the period of such temporary repeal, other provisions in the place of those contained in the Ordinances. The first of these statutes was passed in the year 1794, and the last in 1825, by which last statute the temporary repeal of these Ordinances was continued to the 1st May, 1827, and no longer. At this period, by the expiration of the temporary repealing statutes, the Ordinances revived, and again became the law by which the Militia was regulated. It was peculiarly fortunate, for the peace and tranquility of the country, that, in the absence of any other provisions, this revival took place ; inasmuch as, besides the ordinary security conferred by Militia Law, there is this peculiar benefit

derived from it in this Province, that it furnishes Peace Officers throughout the country Parishes, that is, throughout the whole Province, with the exception of the towns of Quebec, Montreal, and Three-Rivers ; there being a special provision of law by which Captains of Militia and Officers of inferior grade are constituted Peace Officers, and there being no other Peace Officers except in these three towns. Without a Militia Law, therefore, the country at large would have been without the legal means of maintaining, effectually, its internal tranquillity. The Government having, as it was its duty to do, and as the public safety and interest required, enforced these Ordinances, as a part of the law of the land, a clamour against them was immediately raised by disaffected persons, who, aware of the salutary and necessary power with which they permanently armed the Government, were anxious to prevent the execution of them. Among these persons, the Editor of the Canadian Spectator, as the organ of the party to which he belongs, rendered himself conspicuous ; and it is with reference to these Ordinances that he presumes to charge the government with reviving Military Ordinances, against the plainest rules of legal construction. It is proper to add, that, amidst the opposition which the execution of the Ordinances experienced, some Militiamen having been fined for not attending the reviews required by these laws, an action of trespass was brought against the Officers by whom the fines were levied, for the express purpose, as the public were informed by the Canadian Spectator and his associate papers, of trying the validity of these Ordinances. This action has been since brought to issue, and upon this question no gentleman could be found, who was willing to compromise his professional character, by maintaining the Ordinances not to be in force. The consequence has been, that upon a hearing, at the instance of the defendants, these Ordinances have been solemnly adjudged, by His Majesty's Court of King's Bench, to have been in force from the 1st May, 1827, the period at which the last of the temporary repealing statutes expired ; and this decision it has not been attempted to impeach.

The second of these prosecutions is grounded on an article in the Canadian Spectator, of the 3rd November, 1827, for



which an indictment was found against the same individuals, as in the case of the former prosecution, in the Court of Oyer and Terminer and general Goal Delivery, held at Montreal in that month; and the matter charged as libellous will be found in the extract (No. 2) in the annexed Appendix. The enforcing of the militia ordinances, in this, as in the articles already noticed is made the ground of the imputations against the Government; and the writer of this article introduces a libellous letter from Mr. Thomas Lee to the Governor-in-Chief, under the general head "Militia." He prefaces this letter—by expressing his approbation of it, by stating that the doctrines propagated by His Majesty's Government should make all true British subjects boil with indignation, and by charging the Governor with having, by his proclamation or general order, made law and military law, and with defaming British subjects, because they declined obedience to orders which were not law. These disgraceful charges have no other foundation than the execution of the laws of the land, which the editor and printer of the newspaper now referred to had the hardihood to assure the country were not laws. In the letter of Mr. Lee, which follows these prefatory remarks, this individual insults the person at the head of the Government, and the Government itself, by charging the Governor-in-Chief with issuing an illegal militia order, and by imputing to him tyranny and oppression, and also falsehood; and it is this letter which the *Canadian Spectator*, in the article in question, held up to the public in terms of high commendation, as a very interesting document.

The third of these prosecutions was occasioned by an article proceeding from the same press, and contained in a newspaper called the *Spectateur Canadien* of the 14th of November, 1827; for which an indictment was also found by the grand jury in the same court against James Lane, the printer of the paper. Of this article a copy will be found in the extract (No. 3) in the annexed Appendix. To convey an adequate idea of the malignity of this libel, and of the total absence of all ground for the criminal charge it conveys against the administration of justice, it is necessary to state a few facts. A new street had been laid out at Montreal, under the authority of the magistrates there, and in execution of the provisions of the Road

Act, prov. stat. 38 Geo. III. c. 9. After this street had been laid out, a Mr. Stanley Bagg, deriving an alledged title from a convent of nuns called the Grey Sisters, thought proper to erect a wooden building on it. This being an obstruction of a highway and a nuisance, it became the duty of the surveyor of the highways, which office is filled by a Mr. Viger, to remove it in the manner prescribed by the 68th section of the same Road Act. Mr. Viger, having neglected to perform this duty, one or more orders of the magistrates, assembled in special session, was made enjoining on him the performance of it. After one, certainly, and I believe, two orders to the same effect, three magistrates, of their own mere authority individually, and without any special session having been called to re-consider the subject, presumed to issue a *supersedeas*, as they called it, discharging Mr. Viger from that duty which the law had imposed upon him, and which the magistrates acting collectively, in one or more special sessions, had required him to perform. For this non-feasance of a duty required by a statute, an indictment was found against Mr. Viger, in the Court of Oyer and Terminer and general Goal Delivery already mentioned; and at the same time an indictment was found against Mr. Bagg for a NUISANCE. In the libellous article now referred to, this proceeding, than which none more legal and unexceptionable could be adopted, is held up to the public or rather to the French Canadian part of it, as most unwarrantable, as involving an illegal assumption of jurisdiction by the Court of Oyer and Terminer, over a subject belonging exclusively to a civil judicature, and as being "*un insulte et un outrage aux loix.*" For having permitted this proceeding, the court is charged with forgetting and disregarding the best established principles of law and justice, the country is represented to be in an alarming state, and it is said that the citizens ought to tremble for the consequences!! In order also to convey a charge of positive corruption, as one of the causes of this monstrous proceeding, the writer of the article adds—"Les Magistrats qui se trouvent blessés par ce supersedeas sont du nombre des grands jurés, et le president de la police surse a cette cour!!" In a more enlightened community, the writer of such an extravagant article would incur by it universal ridicule and contempt, and the very

excess of its folly would preclude any public ill-consequence from it; but it is not so in this country, where such is the ignorance which prevails among the people for whose edification this article was intended, that the charge thus conveyed against the administration of justice would be gravely received, and a strong impression produced by it. This article, independently of its libellous character, it is proper also to observe, was deserving of the most serious consideration under another aspect, as being a manifestation of a principle on which the press from which it proceeds habitually acts, that of misrepresenting and calumniating the administration of justice, whenever persons belonging to the party, by which it is supported, are made obnoxious to punishment, for an infringement of the laws. Mr. Viger, the road-surveyor, is intimately connected by relationship and otherwise with the party by which the *Spectateur Canadien* is supported: hence, no doubt, the motive for misrepresenting the proceedings in question; with an expectation also, it is not uncharitable to suppose, that the petit jury (composed of illiterate persons) by whom the case was to be tried, would not be uninfluenced by this libellous misrepresentation.

The fourth of these prosecutions is derived from an article contained in the *Canadian Spectator* of the 24th of November last, for which an indictment was found against Mr. Waller, the Editor, and Mr. Duvernay, the Printer of that paper, in His Majesty's Court of King's Bench, held at Montreal in March last, and of which a copy will be found in the Extract (No. 4) in the annexed Appendix. For the understanding of this libel, it is necessary to mention, that in the Court of King's Bench, held at Montreal in September, 1827, indictments had been preferred against several persons for perjury, committed by them at an Election held at William-Henry, in the preceding month of July, by falsely swearing that they possessed the necessary qualification to entitle them to vote at that election. These indictments had been *ignored* by the Grand Jury of that Court, and new bills for the same offences were preferred before the Grand Jury of the Court of Oyer and Terminer and general Gaol Delivery, held at Montreal in November, 1827, by which latter Grand Jury these bills were found. In the article now

referred to, the not finding of the bills in September, is called "An acquittal by the country," and on this ground the Court of Oyer and Terminer is impeached before the public, for having, it is said, thus overturned the well-known principle of the English law, according to which, an acquittal by a jury is a protection against any further prosecution for the same crime; and for having thereby determined that an individual is exposed to be prosecuted, to infinity, for an offence of which he has already been acquitted by the country. In addition to this libellous charge against the court itself, the Grand Jury of the same court, having exercised a legal and constitutional power in finding these bills, is charged with having allowed themselves to be used as an instrument. The foreman is represented as a person unworthy of confidence, and all the members of the jury, with the exception of five or six, are held up to obloquy; it being stated that their characters, private and public, and the independent manner with which they opposed, though without success, all these proceedings, made an honourable exception in their favour, and obliged the writer of the article to distinguish them from the rest.

This scandalous libel on the Court and Grand Jury, by which the Court is made criminal for permitting that which is the practice of every day, and by which the proceedings of the latter, rendered secret under the obligation of an oath, are disclosed or professed to be disclosed, and are made the subject of disgraceful remarks, must be referred to the same motive, which dictated that already noticed, with respect to the prosecution of Mr. Viger. The persons prosecuted for perjury had voted for a candidate supported by the party by which the Canadian Spectator itself is supported. On this ground, they were to be screened from public justice; and for this purpose, courts and juries, through whose power it was attempted to bring them to justice, were to be calumniated, for having entertained prosecutions against them, and were to be overawed before trial and judgment. I will only beg leave to add, with respect to this prosecution, that only one of the indictments for perjury, which were *ignored* by a Grand Jury in September, 1827, and found by a Grand Jury in November following, has been tried, since the publication of this libellous article, and,

on this indictment, the party accused, one Joseph Clapreod, was found guilty by a common jury, on the clearest evidence.

The fifth and sixth of these prosecutions has been occasioned, by an article contained in the Quebec Gazette of the 28th February, 1820, being a newspaper published by Samuel Neilson, at Quebec. For this article, an indictment was found against Mr. Neilson, the Editor and Printer of the paper, and another indictment against Mr. Charles Mondelet, by the Grand Jury, in the Court of King's Bench, held at Quebec in March last, and a copy of it will be found in the Extract (No. 5) of the annexed Appendix.

This prosecution differs from those of which an account has been given in a very important particular, that is in what respects the means employed for the composition of the libel, and for giving weight and effect to it. In the prosecutions already noticed, the libellous articles proceeded from insulated individuals, expressing their sentiments individually; in this prosecution, the libel proceeded from a number of individuals invested with public authority, as magistrates and officers of Militia, and associated under the imposing name of a *Constitutional Committee*. These persons, being officers of Militia, erect themselves into a tribunal for trying the validity of the public acts and orders of the Commander-in-chief of the Militia, and pass sentence on them as in their wisdom seemeth fit. They assume to themselves all the form of a legally-constituted body, and arraign the conduct of the Commander-in-chief in such terms as to imply in them a right of determining on it. It is for the publication of a libel proceeding from such a self-constituted body, and conveyed in the form of resolutions, of a letter, and of a speech, that this prosecution was instituted. Of the grounds on which the exercise of the power complained of took place, I am ignorant, nor would it seem at all necessary to be informed of them, inasmuch as, whether right or wrong, it could never be canvassed and determined on by such a self-constituted body, as a "Constitutional Committee," without a surrender of the powers incident to the established Government. In the resolutions and letter, the conduct of the Commander-in-Chief is arraigned, as being arbitrary and unjust; and it is said by this body of militia officers, that in their opinion, "et

*allégué de la part de son Excellence* (meaning the fact alleged by the Commander-in-Chief, as the foundation of his general order) *est entièrement mal fondé.*" In the speech, the Commander-in-Chief is spoken of, in the most disrespectful and indecent terms; he is charged, in offensive language, with being guilty of a departure from truth, with being under the influence of absurd and tyrannical notions, and with making defamatory accusations, not deserving of refutation; and the administration of the government by him is represented as being influenced and directed by persons "*qui s'efforcent à le tromper, et qui sacrifient honteusement leur honneur et leurs droits, pour encourager une oppression, dont il n'y a jamais eu d'exemple, dans les colonies Anglaises!*" Not satisfied with these terms of abuse, the orator immediately after, characterizes the persons last spoken of, that is, the principal officers of His Majesty's Government, with whose advice the Governor is presumed to be assisted, as being a "*horde d'invasisseurs et de destructeurs (de volonté au moins) de nos droits,*" and represents two individuals, then recently dismissed from their rank in the militia, as entitled to the glory "*de voir leurs noms inscrits sur le catalogue de victimes de leur dévouement à la cause sacrée de la patrie.*" In conclusion, he charges the Commander-in-Chief with a criminal and disgraceful abuse of the patronage of the Crown, by stating that the persons on whom he conferred the honours were those "*qui ne se les font prodiguer, qu'en abjurant leur foi politique, qu'en se déclarant traitres à la patrie, et en flétrissant pour toujours un nom qui ne leur a été donné que pour y ajouter celui de vrai Canadien.*"

The seventh of these prosecutions is grounded on an article contained in the same newspaper, the Quebec Gazette, of the 11th March, 1828, for which an indictment was found against Mr. Neilson, the printer and editor of that paper, in the same term of the Court of King's Bench, held at Quebec in March, 1828, and of which a copy will be found in the Extract, (No. 6,) in the annexed Appendix.

In this prosecution, the libel is of the same character as that last mentioned. The example set by the Constitutional Committee of Three Rivers, in composing and publishing the libel of which an account has been given, was too agreeable to the

feelings of the turbulent and ill-disposed elsewhere, and too well calculated to answer their views, not to be followed: other meetings of similarly self-constituted bodies, called *Constitutional Committees*, were therefore held for a like purpose, and among these a meeting of the *United Constitutional Committee* of the parishes of St. Gregory, Becancour, Gentilly, and St. Pierre les Becquets, the proceedings of which gave occasion to the seventh prosecution. At this meeting, the same assumption of the forms of a legally-constituted public body obtained, as in the case of its prototype at Three Rivers. In the 1st Resolution, it was declared, that the meeting, being composed of the *majority of the officers of the 3rd Battalion of the County of Buckinghamshire*, would immediately take into consideration the general order of militia which was complained of; and in the ten following resolutions, this meeting of militia officers, assembled in that character, express, in various forms of language, their disapprobation of the conduct of the Commander-in-Chief, which they pronounce to be arbitrary and unjust. But the 6th and 7th of these Resolutions were particularly deserving of attention. By the 6th they declared, *Que les personnes qui acceptent des commissions, en remplacement de ceux qui ont été destitués, sans cause legitime, meritent l'improbation publique, et ne doivent être considérées que comme ennemis des droits du peuple.* By the 7th they declared, *Que les membres de cette assemblée, formant la majorité des officiers du dit 3me bataillon du comté de Buckinghamshire, ne pourront obéir qu'avec mortification, à la personne qui aura ordre de prendre le commandement du dit bataillon.*

The Constitutional Committee of Three Rivers had passed sentence on the Commander-in-Chief, in what related to the general order of which they had taken cognizance. These united Constitutional Committees go a step further: they not only pronounce judgment on the Commander-in-Chief, in relation to the general order taken under their special consideration, but by their 6th Resolution, they denounce public odium against persons accepting commissions in the place of persons removed; and, by their 7th Resolution, they sufficiently intimate a disposition not to yield obedience to such persons. Of the dangerous nature of the associations, from which these libels pro-



ceeded, no person could doubt. They were evidently calculated to bring the authority of the Government into discredit and contempt, *and gradually to supplant it*. But however criminal may have been the views of a few individuals, by whom this seditious machinery was put into motion, it is certainly due to the country at large to remark, that it was the work of a few persons only, and that the mass of the inhabitants was in no degree infected with the disloyalty that might be inferred from such proceedings, in other countries. The necessity, nevertheless, of putting a stop to such associations, so pregnant with mischief, was urgent; and this was effectually accomplished, in this instance, by restraining the publication of their proceedings in the newspapers. After the two last prosecutions, of which an account has been given, the agency of Constitutional Committees, in opposing the Government, and in producing disorder, ceased.

The eighth of these prosecutions is grounded on the publication of a letter to the Governor-in-Chief, signed "Charles Mondelet," inserted in the Quebec Gazette of 12th November, 1827, for which an indictment was found against "Mr. Charles Mondelet," in the term of the Court of King's Bench, held at Quebec, in March, 1828, and of which a copy will be found in the Extract, (No. 7,) in the annexed Appendix.

The example which had been set by Mr. Lee, in obtaining notoriety, by addressing an insulting letter to the person at the head of the Government, of which mention has been made, had already been followed in one or two instances, and as yet, with impunity, when Mr. Mondelet, it would appear, became ambitious of the same distinction. It was evident, that unless this disposition received some check, no act of the Government, disagreeable to an individual, could be adopted, without exposing the person at the head of it to be traduced and vilified, in the form of a libellous letter, and without, as a necessary consequence, subjecting the Government itself to disparagement and contempt. It seemed necessary, therefore, that this check should be applied in the case of Mr. Mondelet, who, it was obvious, had taken Mr. Lee's letter for his model, and had improved on it, by rendering his own more offensively libellous. In it Mr. Mondelet, as Mr. Lee had previously done, charges

the Commander-in-Chief of Militia, in the most disrespectful terms, with enforcing ordinances as law, which were not law, and with issuing illegal orders of militia. In relation to Mr. Mondelet's removal from a particular division of the militia, on the ground of non-residence, as compared with the cases of some other officers, he accuses his Excellency of gross partiality, and observes, "*Votre conseil n'a craint, ni pour lui même, ni pour votre Excellence, la reprobation publique, et le ridicule qu'une semblable contradiction mériterait à son auteur.*" In another part of his letter he observes, "*Si vous m'eussiez taxé, qu'il plaise à votre Excellence, de m'être refusé à l'exécution de vos ordres généraux, qui me semblent aussi illégaux que sont illégales, et non lois, les ordonnances que l'on assigne comme leur base, vous n'auriez pas pû, à la vérité, en justice, me demettre, sans me donner l'occasion d'être entendu, mais, au moins, les formes de votre ordre général n'auroient pas, en apparence, choqué la raison, et cet ordre n'auroit pas été aussi fortement l'objet du ridicule.* And towards the conclusion of his letter he imputes unheard-of tyranny to the Commander-in-chief, in the following terms:—"En dernière analyse, qu'il plaise à votre Excellence, je me permettrai de vous dire, en usant du droit d'un sujet Anglois, que votre conseil égare grandement votre Excellence, en le portant à commettre des actes qui devraient être inouis sous l'empire Britannique, et dont notre colonie seule offre des exemples."

The ninth of these prosecutions is grounded on the publication of Mr. Lee's letter above mentioned, in the Quebec Gazette of 29th October, 1827, for which an indictment was found against Mr. Neilson, the Editor and Printer of that paper, by the Grand Jury, in the term of the Court of King's Bench, held at Quebec in March, 1828. In explanation of this prosecution, it is sufficient to refer to what is above stated, in relation to the second of these prosecutions.

The tenth of these prosecutions is grounded on an article contained in the Quebec Gazette of 29th November, 1827, for which an indictment was found against Mr. Neilson, the Editor and Printer of that paper, in the term of the Court of King's Bench, held at Quebec in March, 1828, and of which a copy will be found in the Extracts, (No. 8,) in the annexed

**Appendix.** This libel is an amplification of the two libels, which are the subjects of the third and fourth prosecutions above mentioned, the two being blended and amplified in this. Upon this prosecution it is sufficient, therefore, to refer to the explanations above given in relation to the third and fourth prosecutions.

On the part of the Crown, all due diligence, in bringing these several prosecutions to trial, has, I beg leave to state, been exerted. The indictments found at Montreal, in November last, were brought by *certiorari* into the Court of King's Bench, in the succeeding term of March, and the trial of them was then moved for, but the defendants represented that they were not ready to proceed to trial, and succeeded in obtaining a postponement of it till the next term, held in September last. On this last occasion, the trials did not take place on the days fixed for them, in consequence of a difference of opinion in the members of the Court, respecting the manner of preparing the lists, from which the special juries for these trials had been struck: they now stand over, therefore, to be had in the next term, which will be held at Montreal, in the month of March. With respect to the indictments found in the Court of King's Bench at Quebec, in March last, they were found too late in the term, to admit of the trials being had in it. In the last term, held at Quebec in September, the multitude of cases of felony, before the Court, precluded the trial of these misdemeanors, which were therefore permitted, on the part of the Crown, to stand over, and no application was made for the trial of them, on the part of the defendants; so these cases also remain for trial, in the next term of the Court of King's Bench, which will be held at Quebec, in March next.

In addition to what has been stated respecting these prosecutions, it would seem not to be foreign to the order of reference with which your Excellency has honoured me, to notice briefly, some steps which have been taken by the persons indicted, or some of them, in conjunction with their friends, to render abortive and defeat them.

By the Minutes of the Evidence taken before the Committee of the House of Commons, on the civil Government of Canada, in the last session of the Imperial Parliament, which have

reached this country, it appears that a set of Resolutions were produced before the Committee by Mr. John Neilson, the father of one of the persons indicted, purporting to be Resolutions of a "Meeting of landholders of other proprietors composing the Committees appointed at the general meetings of proprietors, held for the purpose of petitioning His Majesty, and both Houses of Parliament, against the present administration of the Provincial Government, and for furthering the said petitions, assembled at the house of Louis Roy Portelance, Esq. in the City of Montreal, 17th April, 1828," in which Resolutions these prosecutions are made the subject of grievance and complaint. Among the names of the persons by whom these resolutions are alledged to have been adopted, is that of Mr. Waller, the person against whom the first, second, and fourth of the indictments above mentioned were found. Whether these Resolutions were or were not adopted, at a meeting composed of the persons whose names precede them, is a matter of some uncertainty. The names render it probable, however, that they were so adopted, being the names, generally, of the known supporters of the papers which are the subjects of indictment, and probably of the proprietors of them, whose acquiescence Mr. Waller would be likely to obtain, in any statements he would submit to them, on the subjects to which the Resolutions relate, and in particular, to those declaring these papers to be void of offence. The Resolutions themselves contain convincing intrinsic evidence of their being the production of Mr. Waller himself, who has found it convenient to embody his sentiments and defence in these Resolutions.] He has evidently not neglected his own defence in them; for, in the 11th Resolution, this unauthorized meeting of individuals is made to contradict the indictments found by the Grand Inquest of the District, and to declare the publications which the latter, on their oaths, pronounced to be seditious libels, to be "innocent and praiseworthy," and "entirely free from any thing prejudicial to the laws, or to public order." This mode of superseding the authority of the legal tribunals of the country, I cannot but take the liberty of remarking, is without precedent, and, if successful in this instance, must be destructive of all legitimate authority. It does not belong to me to notice the charges contained in these Resolutions, against

the Governor-in-Chief, Courts, Chief Justice, Sheriffs, Jurors, and other public functionaries, all of whom it has entered into the views of the writer of these Resolutions to traduce and vilify. But as I am made personally conspicuous in these charges, and am represented to have acted from improper motives, and to have discharged my official duty with undue severity, even oppressively, it seems fit, that, in submitting to your Excellency this account of the prosecutions complained of, I should exonerate myself from this foul imputation, by stating a few particulars. It is insinuated, if not asserted, in these Resolutions, that, in the institution of the prosecutions in question, I have acted under the influence of personal feelings, from having concurred in advising the militia arrangements complained of. My feelings, as prosecuting officer of the Crown, must be a matter of indifference, in relation to the truth or falsehood of criminal charges; but the insinuation or assertion, such as it is, is entirely untrue, and has been hazarded at random, as the other disgraceful imputations contained in these Resolutions have been, merely to bring discredit on individuals and public authorities, and thereby render the Government itself odious. Except in having advised the enforcing of the Militia Ordinances, as a part of the law of the land, it has not fallen within the scope of my duty, to have any thing to do with the Militia arrangements of the country. To appointments and dismissals I have been equally a stranger. I am also represented as a violent opponent of the representative body, but am at a loss to conceive on what ground; and equally so to perceive the bearing of this demerit on the prosecutions complained of. I am likewise charged with having proceeded, in a "*revengeful and oppressive manner*," against Mr. Charles Mondelet, of the prosecution against whom an account has been given. This charge, depending on matter of fact, is easily refuted. It is said that Mr. Mondelet ought to have been prosecuted in the district in which he resides, and where his offence was committed. Had the offences for which he has been indicted been committed in the district of Three Rivers, this observation would have been true, and he could not have been prosecuted elsewhere; but he was indicted, not for writing or publishing libels in the district of Three Rivers, in relation to which offences I was in

possession of no evidence to enable me to prosecute him there, *but* for having published, and caused and procured to be published, certain libels in the district of Quebec, in the courts of which, latter district only could these offences be cognizable. This charge, therefore, is utterly groundless. But it is also said that Mr. Mondelet was put to inconvenience, in travelling from Three Rivers to Quebec, to answer these indictments against him, there. This certainly is an unusual complaint on the part of a person accused, particularly before his innocence has been ascertained by an acquittal. The inconvenience complained of is, necessarily, experienced by all persons, who subject themselves to criminal accusations; and, in making Mr. Mondelet amenable to the Court of King's Bench at Quebec, the trouble of travelling hither, on his part was unavoidable. It is also said that Mr. Mondelet, and the witnesses subpoenaed from Three Rivers, incurred personal danger in performing the journey. The route between Quebec and Three Rivers, the great highway of the province, is known here (though it may not be in known by persons in London, for whose perusal Mr. Waller's Resolutions were intended) to be free from danger to travellers at all seasons of the year, as much so as a promenade in the streets of Quebec and Montreal. If, by any strange misadventure or accident, these persons should have incurred any risk, it must be considered as one of the casualties to which men, in every situation, even in those the most secure, are liable, and for which it does not seem reasonable to make His Majesty's Attorney General responsible. It is also represented that I have acted partially in selecting for prosecution the editors of one class of newspapers only. It has been my duty to prosecute those persons, by whom libellous attacks have been made on the Government, its courts of justice, and its public functionaries, for the purpose of bringing them into contempt and disgrace, in the minds of the people. If such attacks have been found in one class of papers only, as has been the case, it sufficiently accounts for my having prosecuted the editors and printers of these only. With the personal abuse of contending editors, which it might have been prudent and proper, on the part of their respective employers, to have restrained, but not affecting any part of the Government, I have had nothing to do.

The King's courts of justice have been open to all persons aggrieved by such libels, and it is their own fault if they have not sought redress there; my ministry not being necessary in procuring for them that redress; but it is trifling with the understanding of the persons to whom such a palliation is offered, to attempt to excuse gross libels on the Government, and the Courts of Justice, on the ground that other editors have published libels on some other persons, and on some other things. I will only beg leave to add, as a general answer to the unfounded misrepresentations contained in Mr. Waller's Resolutions, respecting the conduct of these prosecutions, that in laying the indictments in question before the grand juries, by which they have been found, I was, and could only be, influenced by a sense of duty; and, in the several stages of these prosecutions, I have in no respect deviated from the established course of practice, which is observed in criminal prosecutions. The grand juries, by which the indictments have been found, have been composed of persons of the first respectability, in the districts of Quebec and Montreal, and have been returned in the same manner as other grand juries have been, from the period of the conquest downwards. Till the publication of the libels of Mr. Waller and his associates, juries so returned had discharged their duties without reproach, and no person had ever called in question the purity of the administration of criminal justice. In the desperate position in which Mr. Waller had placed himself, it is not surprising that the judicature of the country, however free from reproach, till reached by his malignity, should not be acceptable to him: it is indeed not likely that he should be satisfied, otherwise than with a judicature of his own choice, or with no judicature at all; and, of these alternatives, the last would probably be most agreeable.

I cannot conclude this Report to your Excellency, without respectfully deprecating the dangerous consequences to be apprehended to His Majesty's Government, and the peace and tranquillity of the province, from the course which has been pursued by Mr. Waller and his associates, if it should be permitted to be successful. This course may be characterized in a few words. The Governor of the Province, the Courts of Justice, Juries, and other principal functionaries of His Ma-



jesty's Government, have been grossly calumniated, traduced, and vilified. Of these grave offences, the authors of them have been accused, in legal form, by the Grand Inquests of the Country. Instead of meeting the charges against them, in the course prescribed by law, the principal delinquent, for the purpose of counteracting the legal proceedings had against him and his associates, and in contempt of the authority of the Court in which the accusations are pending, calls a meeting of his friends and partisans, who pronounce him and his co-delinquents innocent of the charges against them. Under colour of this meeting, he frames Resolutions, containing a specious misrepresentation of the facts on which the indictments have been found, and proclaims the falsehood of the charges contained in them. In these same Resolutions, the principal party accused renews the calumnies he had previously published against the Government and the administration of justice; and, on the ground that these calumnies are true, presumes to decline the jurisdiction of the Courts before which he and his associates stand indicted, as being corrupt and unfit to try them. Whether the execution of the laws can be thus eluded, or frustrated, is an important question, to which the attention of His Majesty's Government is necessarily called by the foregoing statement. I shall not be thought, I hope, to take an improper liberty, if I presume to express my humble conviction, that if impunity can be obtained by so unprecedented a course of proceeding, the consequences thence resulting must be a general contempt of the legal tribunals of the country, and an utter inability, on the part of His Majesty's Colonial Government, to assert its authority, and maintain peace and good order.

All which is, nevertheless, most respectfully submitted to your Excellency's wisdom, by your Excellency's

Most obedient humble servant,

(Signed) J. STUART,  
*Attorney General.*

Quebec, 20th October, 1828.

True Copy, J. STUART.

APPENDIX TO THE REPORT OF THE ATTORNEY  
GENERAL OF LOWER CANADA,

*Dated 20th October, 1828,*

(No. 1.)

Extracts from the Canadian Spectator of the 7th November, 1827, containing the libellous matter, for which an Indictment was found by the Grand Jury, against the Editor and Printer of that Paper, in a Court of Oyer and Terminer and General Gaol Delivery, held at Montreal, in November, 1827:

“ The Official Gazette talks of the Speaker being the organ of ‘*conciliation*’—With whom? *Not* between two parties in the Commons over which he presided. There unanimity prevailed—for two or three voices from the officers of the government did not disturb the unanimity in the Commons. Is it conciliation with His Excellency? *What conciliation could be hoped for with an administration which, for seven years, had been violating the laws, violating the Constitutional rights of the Country—which had transacted with the Ministers in England to declare against us—which had vowed interminable war with our rights—which had dishonoured and defamed the Lieutenant Governor, who had won the affections of the country, had treated it kindly and established harmony—which had refused communication of necessary documents on important subjects, which had defamed, insulted, and injured the Representative body—which had sanctioned, in its official papers, the filthiest abuse against all individuals prized by their countrymen for their abilities, activity, and patriotism? What hope of conciliation remains with such an administration, which avows that it will not change, revives Military Ordinances against the plainest rules of legal construction, and employs the power with which it vests itself to punish British subjects for the exercise of civil rights, coercing the free expression of political*

*opinion—which travels about thanking any half dozen of rascals, ignorant, fawning, or designing individuals for addresses, which load it with flattery, and utter abusive calumnies against the Representative body, chosen by the landholders and freeholders of the Province? Conciliation is impracticable with such an administration. Conciliation with the Clerkarehy would be submission, on the part of the House, to the loss of its essential rights, to insult, and to dishonour.”*

“The Country is threatened by the Official Gazette, that if Mr. Papineau is chosen Speaker, the Governor, placing himself in opposition to the voice of the whole country, will refuse his consent and dissolve the House. We hope the House will choose Mr. Papineau, and show reasons for choosing him, and persist in the choice. That the Governor and his Council will refuse their ratification we think probable enough; how far that will be valued we cannot say; and we think it is probable they will dissolve the House, to the great injury of the Country. Another subject of discord and discontent will thus be raised by the present administration, and the passions of the Executive and of the place-holders will commence another war against the whole Country. *There can be little doubt that such an administration will be considered as a nuisance by the British Government, and that its own follies and misconduct will, if the Country co-operate with firm and decisive measures speedily extinguish it.*”

(No. 2).

Extracts from the Canadian Spectator of the 3d Nov. 1827, containing the libellous matter for which an indictment was found by the Grand Jury, against the Editor and Printer of that Paper, in a Court of Oyer and Terminer and general Gaol Delivery, held at Montreal, in Nov. 1827:—

#### MILITIA.

Our readers will consider the following documents very interesting. Mr. Lee expresses himself like a British subject. *The doctrines, propagated by and on behalf of the Provincial*

*Executive, should make all true British subjects boil with indignation. The Governor not accountable! The Governor, by his Proclamation or General Order, to make law and Military law! And British subjects to be defamed, because they decline obedience to Orders which are not law! But the Province will yet and soon have justice.*

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“A Son Excellence le Comte de Dalhousie, Gouverneur en Chef de la Province du Bas Canada, &c. &c.

“MYLORD,

“Puisque vous vous êtes servi des papiers publics, et de votre prérogative, pour me perdre dans l'opinion de mes concitoyens, sans m'avoir donné l'occasion légale et usitée, d'être entendu, je prends la liberté d'employer très-respectueusement la même voie pour y répondre.

“Je proteste donc contre l'Ordre General de Milice, du 25 Octobre, present mois, qui annule ma Commission de Capitaine au 1er Batallion de la Milice de Quebec, dont Mr. Joseph François Perrault est le Lieutenant-Colonel Commandant, parce que je me suis honnêtement et légitimement refusé à obéir aux ordres illégaux du Lieutenant-Colonel Perrault; *parce que votre Ordre General de Milice, Mylord, comme Gouverneur en Chef, est illegal;—*Parce que l'idée, adroitement répandue et propagée dans la société, qu'un Gouverneur, en vertu de sa Commission, ne serait comptable qu'à Dieu et sa propre conscience de toutes ses actions, ou qu'il pourrait impunément, en quelque cas que ce fut, agir arbitrairement, despotiquement, et tyranniquement, envers la liberté ou la propriété des braves et loyaux sujets Canadiens de Sa Majesté, est une doctrine monstrueuse et qui ne peut-être admise sans le plus grand danger; parce qu'un Gouverneur ne peut, sous le manteau de la loi, ni même sous les formes les plus strictes de la loi, exercer de la cruauté, de la malice, ou de l'oppression envers aucun des sujets de Sa Majesté, sans en être personnellement responsable;—*parce que vous vous êtes, Mylord, prêté injustement à des insinuations méchantes, fausses, et injurieuses à mon égard; enfin parceque la lettre que vous avez fait publier,*

*Mylord, en tête de cet Ordre General de Milice qui annule ma Commission de Capitaine, contient des absurdités, des faussetés, et est incorrecte.*

“THOMAS LEE,

“Ex-Capitaine au 1er Bataillon de Milice

“du Comté de Quebec, et Notaire.”

“Quebec, 29e Octobre, 1827.”

(No. 3.)

Extracts from the “*Spectateur Canadien*” of the 14th Nov. 1827, containing the libellous matter for which an Indictment was found by the Grand Jury, against the Printer of that paper, in a Court of Oyer and Terminer and General Gaol Delivery, held at Montreal in Nov. 1827.

“Cour d'Oyer et Terminer—Lundi dernier les Grands Jurés ont trouvé un *True Bill* contre Mr. Stanley Bagg, pour nuisance, et contre Mr. Jacques Viger pour négligence à remplir les devoirs de sa charge d'Inspecteur des chemins, &c. Nous publions sur ce cas intéressant les faits qui sont parvenus à notre connoissance.

“Il y a quelques mois Mr. Stanley Bagg fit construire, sur un terrain clos, une petite bâtisse en bois, qui depuis a été habitée. Sur plainte portée devant les Magistrats, après longue contestation, la majorité des Magistrats, alors présentes, ordonna la démolition de l'edifice, et enjoignit à Mr. Viger de la faire demolir aux frais de Mr. Bagg, si ce dernier ne se conformait point à leur jugement, dans un certain délai. Mr. Bagg, se croyant lésé par cette décision, fit une application devant quelques Magistrats, qui trouvait qu'il avait raison de se plaindre lui accordèrent cet ordre de *supersedeas* dont les Journaux ont déjà rendu compte. Cependant Mr. Viger, pour obéir à ses ordres, se mit en devoir d'exécuter le jugement. Aussitôt, le *supersedeas* lui fit suspendre ses travaux, et il présenta un rapport en forme aux Magistrats. Leur corps s'assemble, on veut faire déclarer nul cet ordre; finalement on s'aperçoit que le tribunal civil supérieur peut seul décider ce différend, et

l'assemblée se disperse, sur ces entrefaites les Magistrats, qui se croient offensés par ce *supersedeas*, envoient au Gouverneur une plainte contre leurs confrères. Nous ignorons quelle réponse a pu faire son Excellence. Mais aujourd'hui l'affaire devient sérieuse, et la Cour d'Oyer et Terminer s'en trouve saisie. Quel en sera le résultat, c'est ce que nous ne pouvons dire—*Il paraît très-extraordinaire que l'on traduise ainsi à la Cour Criminelle, sans distinction, des affaires civiles et celles qui appartient à une classe différente. On oublie et on méprise les idées que l'on s'était formées de la Justice et du droit. Le Pays présente un aspect alarmant; les citoyens doivent trembler. Les Magistrats, qui se trouvent blessés par ce supersedeas sont du nombre des Grands Jurés, et le Président de la Police qui a dirigé tous ces procédés, siège à cette Cour! une chose nous rassure un peu, c'est que les Grands Jurés n'auront pas à juger finalement cette poursuite. Nous n'entreprenons point de disculper Mr. Bagg. S'il a commis une infraction à la loi, et s'il a empiété sur le terrain que n'est pas à lui il doit être debouté de ces prétentions. Mais nous regardons la poursuite au terme criminel, comme une insulte et une outrage aux lois, puisqu'il y avait un autre tribunal plus compétent pour en juger, et qui en devait être saisi."*

Nous ne pouvons terminer sans exprimer le désir que nous avons que la Legislature s'occupe promptement des chargemens que demande impérieusement l'organisation de nos Cours Criminelles. *Les fonds de la Province doivent être employés à des objets de nécessité, et non à des poursuites ruineuses pour le pays, oppressives aux citoyens, et en opposition directe au but de la loi. L'objet qu'ont en vue ceux qui excitent les deux poursuites en question est trop évident pour que nous nous étendrions d'avantage sur cette matière: nous craindrions d'insulter au jugement de nos lecteurs si nous entrions dans des détails."*

## (No. 4.)

Extract from the Canadian Spectator of 24th November, containing the libellous matter for which an Indictment was found by the Grand Jury, against the Editor and Printer of that Paper, in the Court of King's Bench, held at Montreal, in March, 1828:—

“ In England, a practice almost without exception has established, that an individual acquitted by a Jury, of an accusation brought against him for a crime or misdemeanour, is protected against any further prosecution and inquietude, on account of that accusation. *Our late Court of Oyer and Terminer has just given us an example which overturns from the foundation that principle, and which teaches us that an individual is exposed to be prosecuted to infinity, for an offence of which he has already been acquitted by the Country ;* and we do not here allude to Mr. Jobin, against whom the Attorney General has presented, at different times, three bills for the same offence. However, we console ourselves, with the hope, that what has just passed in that Court will not be taken as a precedent, and that a Jury composed of independent men *will never allow themselves to be used as an instrument, like that of the late Court of Oyer and Terminer.* The foreman, Mr. Henry M'Kenzie, had taken a very active part in favour of the Administration, in the late election. He had carried his imprudence (to give it no other name) so far as to require the intervention of the military, at the election of the West Quarter ; he was in the middle of the fray, where he played a part not suitable for a Justice of Peace : he has ventured to alledge publicly that the Governor of this country was not amenable to the law.— This Mr. M'Kenzie is a clerk in the employment of Mr. Molson, and has no other property than his salary. Would it be possible to expect much of independence and impartiality from a man in that situation, who had, as foreman of the Jury, to judge men who had taken a warm part in the elections on the side opposed



to his opinion? To hope for justice in such case would be to show little knowledge of human nature; particularly when we know that this same Mr. M'Kenzie, instead of withdrawing when the Jury was engaged with the business of the election for the West Ward, did conduct the measure himself, by relating facts, searching for witnesses, and giving his opinion.

*In saying that the public has great cause of complaint with respect to the composition and the proceedings of the Grand Jury in question, we owe it to justice to say, that five or six of that Jury should be exempted: their character, private and public, and the independent manner with which they opposed, though without success, all these proceedings, make an honourable exception in their favour, and oblige me to distinguish them from the rest, many of whom should have been excluded, from want of property and other circumstances."*

(No. 5).

Extracts from the "Quebec Gazette," of the 28th February, 1828, containing the libellous matter for which the Indictment was found by the Grand Jury, against the Editor and Printer of that paper, in the Court of King's Bench, held at Quebec, in March, 1828.

"A une assemblée du Comité Constitutionnel du District des Trois-Rivières, (séance extraordinaire à la maison de René Kimber, Ecuyer,) Lundi, le 25e Février, 1828:—

Presens,—M. René Kimber à la chaire; Pierre Defossés, Jean Doucet, Etienne Tapin, Jos. Dubord Lafontaine, Jean Défossé, Louis R. Talbot, W. Vondenvelden, Joseph Courval, Etienne Leblanc, Pierre Blondin, L. Olivier Coulombe, Laurent Craig, Charles Mondelet, Ant. Zept. Leblanc, et Ant. Cazeau.

Lu l'Ordre Général de Milice du 21 du courant.

*Résolu*, 1o. Que la loyauté, l'intégrité, et l'indépendance qui ont de tout tems caractérisé toutes les actions publiques et privées de François Legendre et Antoine Poulin de Cour-

val, Ecuyers, Vice-Présidens de ce Comité, et spécialement la conduite qu'ils ont déployée dans la crise qui a nécessité de la part des habitans de ce pays, des accusations contre le Comte Dalhousie, leur méritent la confiance et le respect de leurs concitoyens.

*Résolu, 2o.* Que ce Comité a appris, que par l'Ordre General de Milice du 21 du courant, Son Excellence George Comte de Dalhousie a cassé et démis de leurs rangs de Lieutenant dans la Milice, ces deux Messieurs, en alléguant " qu'ils se sont montrés les agens actifs d'un parti hostile au Gouvernement de sa Majesté.

*Résolu, 3o.* Que dans l'opinion de ce Comité cet allégué de la part de Son Excellence est entièrement mal fondé.

*Résolu, 4o.* Qu'en conséquence, ce Comité se croit autorisé à déclarer que ces démissions ne pourront jamais porter atteinte à la respectabilité de ceux qu'elles ont pour objet.

*Résolu, 4o.* Que l'adresse suivante à MM. François Legendre et Antoine Poulin de Courval, soit adoptée par ce Comité et qu'un comité speciale composé de quatre membres, savoir: MM. Jean Doucet, Joseph Dubord Lafontaine, Etienne Leblanc et Jean Defosses, prenne les moyens de la faire parvenir à MM. Legendre et Courval.

(Vrai Extrait,)

Secretaires, { CHARLES MONDELET,  
ANT. Z. LEBLANC.

*Mardi, le 26.*—Les quatre Messieurs choisis par le Comite pour faire parvenir l'Adresse du Comite à MM. Legendre et De Courval, apprenant que Mr. Legendre etait en ville, se rendirent à l'hôtel où il logeait, et lui presentèrent l'Adresse suivante adoptee par le Comite.

*A François Legendre et Antoine Poulin de Courval, Ecuyers.*

Nous, Membres du Comite Constitutionnel du District des Trois Rivières, avons cru devoir vous temoigner combien nous sommes sensibles à l'injustice à vous faite, par Son Excellence George Comte de Dalhousie, en vous destituant de vos commissions de Lieutenant Colonels. Nous esperons que ce procede

arbitraire sera repoussée par le Gouvernement paternel de Sa Majesté, et en même tems nous prenons la liberté de vous assurer que notre estime s'est accrue envers vous, à proportion du rang dont vous avez été destitués tous deux.

Ce Comité voit en vous deux patriotes courageux, qui acquièrent d'autant plus de droits au respect public, que l'administration s'efforce de les rendre méprisables.

*Trois-Rivières, 25 Février, 1828.*

Avant l'adoption des résolutions, Mr. Charles Mondelet adressa quelques mots à l'assemblée, à-peu-près comme suit:

Messieurs,

Dans un tems où les esprits allaient reprendre cette tranquillité qui distingue les Canadiens, un nouvel acte de notre administration colonial est venu y mettre une entrave. La Gazette Officielle de Quebec du 21 du courant nous annonce qu'entr'autres, François Legendre et Antoine Poulin de Courval, Ecuyers, nos deux Vice-Présidents, ont été démis par le Comte Dalhousie, de leurs commissions de Lieutenant Colonels, et la raison que Son Excellence allégué comme base de cette démission est assurément des plus étranges. Ces Messieurs, le croiriez-vous! ces hommes que la loyauté la plus éprouvée, le courage le plus élevé, et l'attachement le plus inviolable à leur patrie, ont toujours si éminemment distingués, sont accusés par Son Excellence le Gouverneur en Chef *de s'être montrés les agens actifs d'un parti hostile au Gouvernement de Sa Majesté!* Quelles accusations, Messieurs, contre tels hommes! Elles ne mériteraient en elles-mêmes aucune refutation, car qui est celui d'entre vous qui ne sait pas qu'elles sont absolument sans fondement? Mais elles sont portées par une autorité élevée qui croit qu'il suffit d'être exalté en rang, pour attaquer impunément des citoyens respectables et sans reproches. *Ces notions absurdes et tyranniques sont malheureusement partagées par d'autres que par le Comte Dalhousie; elles le sont par d'autres hommes intéressés à les propager et les proner dans la société comme justes et saines!* Il est donc important, Mes-

sieurs, que Son Excellence cache que si son rang est élevé, du moins il ne lui donne pas le droit de lancer contre nos citoyens des accusations aussi injurieuses, et qui seraient sensibles, si elles ne portaient pas d'un quartier qui regorge de ces sortes de matériaux officiels.

Vous vous rappelez tous de l'assemblée de ce District, du 22 Decembre dernier. Vous vous rappelez qu'elle fut présidée par Mr. Kimber, et MM. Legendre et Courval en étaient les Vice-Présidents. Vous savez tous que ces deux Messieurs ont montré, pour la cause du pays, ce zèle qui a distingué tant d'autres patriotes. Ils ont soutenu avec fermeté les résolutions et la requête qui sous peu de semaines seront soumises au Roi et au Parlement Imperial, et qui comportent contre le Comte Dalhousie des plaintes dont le pays entier a proclamé à haute voix la vérité! Ils se sont, en un mot, montrés publiquement les défenseurs de leur patrie, les amis de leur concitoyens, de vrais Canadiens! *Quels titres n'ont-ils donc pas à la haine et à la malveillance d'une administration entourée de gens qui s'efforcent à la tromper, et qui sacrifient honteusement leur honneur et leurs droits pour encourager une oppression dont il y a jamais eu d'exemple dans des colonies Anglaises! Si MM. Legendre et Courval s'étaient rangés sous la bannière de cette horde d'envahisseurs, et destructeurs (de volonté au moins) de nos droits, ils auraient été aujourd'hui proclamés comme de fidèles sujets! C'est donc un honneur, une gloire, pour ces braves citoyens, de voir leurs noms inscrits sur le catalogue sans fin de victimes de leur dévouement à la cause sacrée de la patrie! Mais si nous partageons ces sentimens, hâtons nous de les faire connaître à ces Messieurs. Qu'ils soient dédommages que dis-je! Qu'ils méprisent cette vaine tentative de les avilir. Ils ne seront jamais avilis puisque la patrie les apprécie; qu'en faut il davantage pour des Canadiens amis de leur pays!*

*Nos procédés devenus publics feront voir à Son Excellence que le rang ne suffit pas pour en imposer, que le mérite seul a du poids chez les honnêtes gens, et que l'opinion publique est non seulement un contrepoids à des accusations aussi déplacées que les siennes, mais qu'elle est infiniment préférable à*

*tous les honneurs dont il abreuve ceux qui ne se les font prodiguer, qu'en abjurant leur foi politique, qu'en se déclarant traîtres à la patrie, et en fletrissant pour toujours un nom qui ne leur a été donné que pour y ajouter celui de "vrais Canadiens."*

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BEAUPORT, 1er Fevrier, 1828.

Narcisse Duchesnay, Ecuyer, Lieutenant-Colonel, &c.

Mon Colonel,

Sous l'administration d'un homme à jamais memorable et digne de l'amour de tous les bons et loyaux sujets, je me trouvais honoré de meriter assez la confiance d'un si illustre personnage pour me charger d'une Commission d'Enseigne. Mais en ce jour que tout est venal, que l'on ne saurait être citoyen étant milicien commissionné, que tant de personnes mille fois plus respectables que moi ont été déplacées et que d'autres étrangers et inconnus, ont été substitués à leur place, *je me croirais souillé si je retenais une commission qui n'a plus rien que de dégradant à mes yeux.*

*Quelque honoré que je fusse je reçus cette commission, je ne l'acceptai qu'après avoir su que mon devoir serait d'agir conformément à la loi. Cette conformité ne pouvant plus être, ma commission cesse d'exister. Elle est à vous disposez en.*

(Signé) M. PARENT.

(No. 6.)

Extract from the Quebec Gazette of the 11th March, 1828, containing the libellous matter, for which an Indictment was found by the Grand Jury, against the Editor and Printer of that Paper, in the Term of the Court of King's Bench, held at Quebec, in March, 1828.

*A une Assemblée Generale des Comités Constitutionnels des Paroisses de St. Gregoire Becancour, Gentilly, et Saint Pierre les Becquêts, tenue dans la maison de M. Joseph Malbiot, en la Paroisse de Bécancour, le 5 Mars courant :*

*Present.*—MM. Jean B. Hébert, à la Chaire, Joseph Turcot, Antoine Leblanc, Vice-Présidents.

J. B. Legendre, Michel Malhiot, La. Landry, B. B. Beauchène, Jean Turcot, M. Gingras, Pierre Dubois, Julien Reau, Isidore Désilait, Jos. Malhiot, Laurent Genest, Alexis Reau, J. B. Panneton, D. Prince, Ja. Chartier, La. Leblanc, P. Désilait, J. Beauchène, Jos. Bellefeuille, Frs. Héon, Thomas Fortier, Joseph Pepin.

Lu l'Ordre General de Milice du 21 Fevrier dernier.

Résolu, 1o. *Que cette Assemblée composée de la majorité des Officiers du 3me. Bataillon du Comté de Buckinghamshire, doit s'occuper de suite de la destitution de Frs. Legendre, Ecuyer, comme Lieutenant-Colonel Commandant le dit Bataillon, operée par l'Ordre General du 21 Ferrier dernier.*

Résolu, 2o. *Que pendant le tems que le dit Frs. Legendre, Ecuyer, été Commandant du dit Bataillon, et de la ci-devant division de Bécancour, il s'est toujours conduit d'une manière loyale et irréprochable, qui lui a merité le respect, la confiance, et l'estime de toutes les personnes qui ont été sous son Commandement.*

Résolu, 3o. *Que cette Assemblée regrette infiniment que Son Excellence ait usé de son autorité, pour priver ce Monsieur d'une Commission dont il remplissait les devoirs avec honneur, par sa justice, sa moderation, et son exactitude.*

Résolu, 4o. *Que cette Assemblée ne voit aucune raison qui ait pu induire Son Excellence à agir d'une manière aussi arbitraire, si ce n'est le zele avec lequel François Legendre, Ecuyer, s'est conduit comme Membre du Comité Constitutionnel du District des Trois-Rivières.*

Résolu, 5o. *Que cette destitution ainsi que plusieurs autres, est une preuve non equivoque que Son Excellence écoute les faux rapports des personnes ennemis de tout ce qui est liberal et constitutionnel, et qui ne cherchent qu'à assouvir la haine qu'elles ont contre le peuple Canadien.*

Résolu, 6o. *Que les personnes qui acceptent des Commissions en remplacement de ceux qui ont été destitués sans cause*

*legitime meritent l'improbation publique, et ne doivent être considérées que comme ennemis des droits du peuple.*

**Résolu, 7o.** *Que les Membres de cette Assemblée, formant la majorité des Officiers du dit 3me Bataillon du Comté de Buckinghamshire, ne pourront obeir qu'avec mortification à la personne qui aura ordre de prendre le commandement du dit Bataillon.*

**Résolu, 8o.** Qu'une Lettre soit adressé à François Legendre, Ecuyer, et présentée par deux personnes choisies par la dite assemblée, lui témoignant qu'elle le regardera toujours comme un ami sincère des droits du peuple, *qu'elle considèrera sa destitution comme une couronne civique que son devouement lui a meritée*, qu'elle aura toujours pour lui le même respect, le même confiance, et la même estime qu'elle a eu pour lui, et qu'il a justement mérités, soit comme Représentant du Comté, Lieutenant-Colonel, Magistrat, ou simple citoyen.

**Résolu, 9o.** Que la Lettre suivante à Mr. Legendre, soit adoptée, et J. B. Hébert et Louis Landry, Ecuyers, soient priés de la lui présenter.

**Résolu, 10o.** Que cette Assemblée remercie le president du zèle qu'il a montré dans la presente circonstance.

**Résolu, 11o.** Que les procédés de cette Assemblée soit publiés.

(Signé) LAURENT GENEST, Scr.

(Pour vraie Copie.)

Le 7 du courant MM. Hébert et Landry se sont rendus aux desirs de l'Assemblée, en présentant à Mr. Legendre l'adresse qui suit:—

MONSIEUR—Nous, Soussignés Officiers de votre ci-devant Bataillon, avons appris par un Ordre General du 21 Fevrier dernier, qu'il a plu à Son Excellence de vous priver de votre Commission de Lieutenant-Colonel. Cette destitution nous eut surpris dans tout autre tems et toute autre circonstance, mais accoutumés à voir des personnes de la plus haute consideration destituées, nous avons déjà prévu que votre mérite personnel et votre devouement à la cause publique, vous ex-



poseraient à la critique d'agens subalternes, qui, pour avoir votre Commission, vous représenteraient sous un faux jour, auprès d'un chef militaire. Nous vous assurons que nous conservons l'estime, la consideration, et le respect que votre conduite civile et militaire vous a mérités, *et que nous considérons votre destitution comme équivalente à une couronne civique.*

(Signé) JEAN B. HEBERT, Président.  
LOUIS LANDRY.

*(Réponse de Mr. Legendre.)*

MESSIEURS—Je suis sensible à l'estime que vous me témoignez en cette circonstance. Votre dévouement me prouve ce que vous avez été par le passé, à mon égard, je vous en remercie. Je n'ai été nullement surpris de voir dans la Gazette Officielle, un Ordre General du Comté Dalhousie, qui annonçait ma destitution de commandant du 3<sup>me</sup> Bataillon du Comté de Buckinghamshire, après les projets depuis longtems médités contre moi, par des gens vils et rempans, qui ont enfin trouvé une occasion favorable dans la crédulité d'un chef qui se laisse induire en erreur par les imposteurs, qui lancent au hasard des jugemens sans avoir entendu les parties accusées.

J'ai l'honneur d'être, Messieurs,

Votre Serviteur,

(Signé) FRANCOIS LEGENDRE.

Gentilly, 7 Mars, 1828.

(No. 7.)

Extract from the Quebec Gazette of the 12th November, 1827, containing the libellous matter for which an indictment was found by the Grand Jury against Mr. Charles Mondelet, in the Term of the Court of King's Bench, held at Quebec, in March, 1828.

*“ A Son Excellence George Comte de Dalhousie, Gouverneur-en-Chef, &c. &c. &c.*

Qu'il plaise à Votre Excellence,

Si je n'écoutais que la voix qui se fait entendre puissamment au fond des cœurs de beaucoup de vos partisans, et de la plupart de vos courtisans, je serais peut-être enclin à voir en vous un être privilégié, et à l'abri des atteintes de la loi. Mais, qu'il plaise à votre Excellence, glorieux d'être né et de vivre sujet Britannique, je dois reconnaître comme principe souverain que la loi est au dessus des autorités. Il me sera donc permis, de me prévaloir du droit dont jouit un sujet de l'empire Britannique, celui de signaler à votre Excellence, avec tout le respect que votre haut rang commande, un acte récent de votre Administration, qui ce me semble, ne lui donne pas beaucoup de relief. La plus grande clarté si je ne me trompe, aussi bien que la bonne foi la plus scrupuleuse, doivent caractériser les actes d'une Administration quelconque ; la bonne foi dans leur perpétration, la clarté dans la manière et le mode où il sont soumis au public. Or, qu'il plaise à votre Excellence, quelque soit le mérite des motifs qui ont pu induire votre Conseil à vous porter à me démettre de ma Commission de Capitaine Aide Major à la division de Boucherville, je prendrai la liberté de représenter à votre Excellence, que votre Conseil s'est un peu écarté de la saine logique, en vous avisant sur cette matière, *abstraction faite de l'illégalité de votre Ordre General du 5 Novembre courant, à l'émanation duquel votre Conseil a fait servir d'instrument, votre Excellence.* La raison assignée comme cause agissante sur l'esprit de votre Excellence, me paroît-être mon absence de la Division à laquelle j'appartenais. Il faut avouer, que si cette découverte de la part de Votre Conseil est récente, elle ne dit beaucoup en sa faveur ; si l'on savait que je ne résidais pas à Boucherville, comment se fait-il que le zèle de Votre Conseil ait été jusqu'à présent si endormi ? Si donc le motif de Votre Excellence, pour me démettre, est appuyé sur ma *non-residence* dans la division de Boucherville, il est assez singulier que MM. Charles Panet, Pierre Elzéar Taschereau,

et Charles Turgeon, également absens des divisions auxquels ils appartiennent, soient devenus les objets des predilections de Votre Conseil, au point de l'engager à aviser aussi singulièrement Votre Excellence. Ces Messieurs sont promus, et chose frappante, *Votre Conseil n'a craint ni pour lui-même, ni pour Votre Excellence, la reprobation public, et le ridicule qu'une semblable contradiction mériterait à son auteur!* Peu de lignes la montrent au public dans tout son jour. Il me semble, qu'il plaise à Votre Excellence, que la loi, la justice, et la saine politique (qui dans une administration doit avoir pour but de ne pas exciter des mecontentemens) auraient du suffire pour ne pas egarer à ce point Votre Conseil, et par suite, Votre Excellence. Demettre de ses fonctions quelconques, un sujet Britannique, sans lui donner prealablement l'occasion d'être entendu, sans lui assigner de raisons, ou lui en assigner qui couvrent de ridicule le procédé qui y tend, aussi bien que ceux qui l'adoptent n'est pas beaucoup respecter les opinions, les idées, et les principes, que l'âge actuel et le système admirable de l'administration Britannique, ont consacrés au foyer de l'empire, qui, grâce à Votre Conseil, est souvent privé de nous faire ressentir la douce influence des rayons qui en jaillissent. Si vous m'eussiez taxé, qu'il plaise à Votre Excellence, *de m'être refusé à l'exécution de vos ordres generaux, qui me semblent aussi illegaux, que sont illegales et non lois, les ordonnances que l'on assigne comme leur bāse*, vous n'auriez pas pu, à la verité, en justice, me demettre, sans me donner l'occasion d'être entendu, mais au moins les formes de votre Ordre General n'auraient pas en apparence choqué la raison, et cette ordre n'aurait pas été aussi fortement l'object du ridicule de ceux qui ne font pas profession volontaire ou necessaire de courber servilement la tête à la voix de celui que plusieurs regardent comme étant au dessus des lois. En dernière analyse, qu'il plaise à votre Excellence, je me permettrai de vous dire, en usant du droit d'un sujet Anglais, *que votre Conseil égare grandement votre Excellence, en la portant à commettre des actes qui devraient être inouis sous l'empire Britannique, et dont notre Colonie seule offre des exemples.* Quant à ma démission (qui dans le fond n'en est pas une *puisque'il n'y a aucune loi de milice*) loin de me peiner, loin de produire sur

moi l'effet que votre Conseil et votre Excellence en ont peut-être anticipé, elle ne peut que me rendre glorieux, *soit qu'elle ait eu pour cause mon refus de reconnaître comme lois, des ordonnances qui ne le sont pas, soit qu'elle ait été la suite de la conduite politique que la justice, mon respect pour les loix et la constitution, et mon attachement inébranlable aux intérêts de ma patrie, m'ont imposé le devoir impérieux de tenir. Telle a été ma conduite, qu'il plaise à votre Excellence, telle elle sera, tant que j'aurai le bonheur de me glorifier d'être un sujet Britannique.*

CHARLES MONDELET,

Ex-Capitaine Aide-Major à la division de Boucherville, et Avocat résident aux Trois-Rivières.

Québec, 10 Novembre, 1827.

(No. 8.)

Extracts from the Quebec Gazette, of the 29th November, 1827, containing the libellous matter for which an Indictment was found by the Grand Jury, against Mr. Neilson, the Editor and Printer of that paper, in the Term of the Court of King's Bench, held at Quebec, in March, 1828.

“ Nous avons vu que le Procureur-Général a soumis au Grand Juré des bills d'accusation pour libelle, savoir ; deux contre MM. Waller et Duvernay, l'un éditeur et l'autre imprimeur du Canadien Spectateur, un contre M. Lane, imprimeur du Spectateur Canadien ; et que la majorité des jurés a approuvé ces bills. *Pour toute remarque, je renvoie à la composition du jure ; et je declare seulement que c'est la premiere fois, à ma connaissance, qu'une cour de justice, au lieu d'inspirer, la confiance et la securité à tous les citoyens, a paru inspirer au contraire des craintes pour la liberté et la propriété des individus en general, qu'elle était censée défendre.*

*Le bill trouve contre les Editeurs des Papiers qui ne sont pas les fauteurs du pouvoir arbitraire, est certainement des*

*autres procedes d'une cour qui, au lieu de s'occuper, comme l'indique la pratique constante et le discours d'ouverture de son honneur le Juge Reid, à vider les prisons surchargees de brigands, d'incendiaires et de meurtriers, a pris presque exclusivement pour objet de ses travaux pendant une duree de quinze jours, des offenses bien moindres, telles que des emeutes, des assaults et batteries de simples delits ; devant laquelle enfin on a traduit, pour des offenses politiques, des personnes qui avaient deja ete acquittées par un juré du pays, ou d'autres personnes qui n'etaient pas même arrêtées lors de la constitution de la cour.* Les Bills pour parjure trouves contre eux a la poursuite du Procureur-General, maintenant partie publique contre eux, et qui avait été acquittés au dernier terme du Banc du Roi ; les bills pour émeute et assault et batterie contre nombre d'électeurs du quartier-ouest de Montreal, lorsque le dernier Grand Jure avait trouvé bill contre deux seulement pour rescue ou deliverance d'un prisonnier d'entre les mains d'un connetable ; l'accusation portée contre Mr. Jacques Viger pour n'avoir pas mis à execution un ordre des magistrats, n'ayant pu le faire en consequence d'un supersedeas accordé par plusieurs autres members de ce corps ; enfin le bill contre les presses qui ne rampent pas servilement aux pieds de certains officiers publics ; voilà la protection que doit à la cour la société du corps de laquelle on pretend que le Grand Jure a été tiré.

En parlant de la composition du Grand Jure, ce n'est pas à dire que tous ses membres soient de la même trempe ; la partialite eût été trop visible ; je me flatte seulement que la seule inspection de leurs noms peut exciter de grand soupçons à ce sujet.

Les membres de jure ont été bien loin d'être unanimes sur les accusations d'une nature politique ; plusieurs d'entr'eux auraient rougi de servir d'instrumens à la persecution ; on dit même que quelques-uns dont les opinions politiques auraient pu les egarer, ont été frappés de la nature des offenses qu'on soumettait à cette cour ; on dit aussi que dans l'affaire des journaux quatorze seulement des vingt-trois jures ont été d'accord sur un des bills ; qu'un des membres de la minorite a exposé à ses confrères d'une manière ferme et lumineuse le danger qu'il y aurait pour eux d'agir par ressentiment et par passion.

## No. 17.

*Copy of a Letter from JAMES STUART, Esquire, to the Right Hon. Lord Viscount Goderich, &c. &c.*

LONDON, 8, Dover Street, 22nd Oct. 1831.

MY LORD,

Within these few days past, I have received from Canada several affidavits, relating to two of the charges of the Assembly, against me ; which, though strictly speaking, not necessary for my justification, cannot but be deemed satisfactory in the consideration of these charges ; and I beg leave, therefore, to transmit copies of them, herewith, to your Lordship. Among them are the affidavits of Samuel Gale, Esquire, late chairman of the Court of Quarter Sessions for the District of Montreal, of John Delisle, Esquire, Clerk of the Peace, and also Clerk of the Crown for the same District, and of Thomas Andrew Turner, Esquire, Foreman of the Grand Jury, in March, 1830, whose presentment is referred to in the Proceedings of the Assembly. The affidavits of these respectable individuals, whom I had no opportunity of seeing previous to my departure from Canada, have been made by them, of their own accord, from a sense of justice, and a regard for truth. They contain details with which the official duties of these gentlemen, connected with those of the Attorney General, made them particularly acquainted ; and, while they confirm my statement, the truth of which is well known to persons at all conversant with the Criminal Courts in Lower Canada, they disprove *in toto*, and in minute particulars, the second charge of the Assembly, grounded on the evidence of Mr. Jacques Viger.

The two other affidavits herewith transmitted relate to the fifth charge of the Assembly. In my answer to this charge it is stated, that no private prosecutor ever required me to institute the prosecutions for perjury, for the non-institution of which I

am held culpable ; and also, that one of the charges for perjury alluded to by the Assembly, was made against a voter who had voted without taking any oath whatever. Both these are singular facts, and are now accounted for, by the disclosures made in these two affidavits ; by which it appears that the persons by whom the charges in question were made, being all of them of low condition in life, were conveyed to an island lying in the River St. Lawrence, between William-Henry and Berthier, where they were made drunk ; and that while they were in a state of intoxication, disqualifying them for taking an oath, a Justice of the Peace, who had been sent for to the contiguous mainland (Berthier) for this purpose, arrived on the island, and swore them to the depositions, which were subsequently sent to me, to ground prosecutions for perjury. With a knowledge of these facts, it ceases to be a matter of surprise, that a voter, who had taken no oath at all, should have been charged with perjury by a drunken man deprived of his reason, and that no private prosecutor would incur the responsibility of acting on depositions thus taken.

I have the honour to be, with the greatest respect,

My Lord,

Your Lordship's most obedient, humble servant,

(Signed) J. STUART.

To the Right Hon. Lord Viscount Goderich,  
&c. &c. &c.



## No. 18.

*Affidavit of SAMUEL GALE, Esquire, late Chairman of the Court of the Quarter Sessions of the Peace for the District of Montreal, in Lower Canada.*

## PROVINCE OF LOWER CANADA.

DISTRICT OF }  
MONTREAL. } To wit.

SAMUEL GALE, of Montreal, in the said district, Esquire, Advocate, being duly sworn, deposeth and saith, that he was appointed one of His Majesty's Justices of the Peace, and Chairman of the Court of Quarter Sessions, in and for the said district of Montreal, in the month of May, one thousand eight hundred and twenty-four, or about that time, and continued to discharge the duties of the said office, as well as the duty of Police Magistrate for the said district, until the month of October now last past, with the exception of a period of about seventeen months, during which he was absent on a mission, on behalf of the Executive Government of Lower Canada, and during which another person was appointed to perform the duties of the said office. And the deponent further saith, that, according to the practice which prevailed during the said period of time, as well as previously, it was his duty to transmit to His Majesty's Attorney General for the said Province, residing at Quebec, in the said Province, the depositions and papers relating to criminal proceedings to be carried on in His Majesty's Court of King's Bench for the said district of Montreal: and such depositions and papers, it was usual and customary to forward to the said Attorney General, some days before the opening of the said Court, in order that the said Attorney General might prepare the necessary Indictments, and give the requisite directions for the subpoenaing of the witnesses in support of the proceedings to be grounded on the said depositions and papers. And the deponent further saith, that this course was pursued, as well

before as after the appointment of James Stuart, Esquire, to the said office of the Attorney General. And the deponent further saith, that among the depositions and papers so transmitted to the Attorney General, it has been the practice to include depositions and papers relating to petty larcenies and misdemeanors, of which persons in custody have been accused, and proceedings for such offences in these cases have, during the period aforesaid been carried on by the Attorney General in His Majesty's Court of King's Bench; and the deponent believes that the same practice has obtained for a great number of years past, in the said district. And the deponent further saith, that having perused the evidence ascribed to Jean Delisle, Esquire, in the Second Report of Grievances of the House of Assembly of the said Province of Lower Canada, and therein appearing to have been given before the said Committee, on the eighteenth day of February last, this deponent saith, that the depositions and papers relating to the indictments therein-mentioned to have been preferred against François Fournel, Thomas Pebble, Jean Baptiste Blondin, Pierre and Timothé Guerin, Jean Baptiste Fournel, and Richard M'Ginnes, and David Codey, and also against Charles Carpenter, were, to the best of his recollection and belief, transmitted, together with the recognizances of such of the witnesses as had been bound over, to the said James Stuart, as such Attorney General, in the usual and accustomed manner, in order that he might prepare Indictments, and carry on proceedings on the same, in His Majesty's said Court of King's Bench, for the offences specified in the said evidence of the said Jean Delisle. And having also perused the evidence ascribed to Jacques Viger, Esquire, in the said Second Report of the Committee of Grievances, and therein appearing to have been given, before the said Committee, on the twenty-third day of February last, this deponent further saith, according to the best of his recollection and belief, derived from his having acted in his capacity aforesaid, that the several indictments whereof mention is made, in the said last-mentioned evidence, and which, it is therein stated, were preferred against the individuals therein named, were framed and drawn up, upon or in consequence of depositions and papers, which, in the usual and accustomed manner before mentioned, had been transmitted to the said

Attorney General (James Stuart), in order that he might ground proceedings on the same; and that the said James Stuart, in the several cases mentioned in the evidence of the said Jean Delisle and Jacques Viger, preferred Indictments, and carried on proceedings against the several individuals therein named, in His Majesty's said Court of King's Bench, in the usual manner, and as this deponent is of opinion would have been done by his competent predecessors in office, under all the circumstances.

And this deponent further saith, that, during his continuance in the office of Chairman of the Quarter Sessions, he endeavoured to cause various larcenies and offences of the minor descriptions, mentioned in the evidence of the said Jean Delisle and Jacques Viger, to be prosecuted before the Court of Quarter Sessions, and gave directions to that effect to the Clerk of the Peace; but that the said Clerk of the Peace, Jean Delisle, Esq. represented to this deponent, that he had heretofore made disbursements in subpœnaing witnesses, and other proceedings, on behalf of Government, before the said Court, for which he had long and vainly solicited payment, as there were no funds appropriated for the payment of such process, and the allowance of witnesses, before the Court of Quarter Sessions, and that it could not be expected that he, the said Clerk, was personally to incur the losses and expense attendant upon such prosecutions, nor was he inclined, from his own funds, to make the disbursements. That this deponent conceived the said Clerk to have just reasons for his conduct, and bath a knowledge that many bills of indictment for crimes could not be found, nor when found, proceeded upon in the said Court of Quarter Sessions, for want of funds to pay the expences and allowances to witnesses; and that when the accused were in confinement for such crimes, there was often no alternative but either to discharge them without trial, or to bring their cases before the said Court of King's Bench, for whose proceedings funds were provided, applicable to the payment of the expences and allowances to witnesses; and that, in the opinion of this deponent, the said Attorney General would have been culpable, and it might have been made a charge against him, for the neglect of duty, and the established practise of his predecessors in office, had he omitted to bring before the Grand Jury and the said

Court of King's Bench the bills of indictment, the bringing of which is now, by some persons, endeavoured to be perverted into malversation, or ascribed to improper motives.

(Signed) SAML. GALE.

*Sworn before me, at Montreal aforesaid,  
this 30th July, 1831,*

(Signed) JS. REID, J.K.B. Montreal.

True Copy, J. STUART.

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No. 19.

*Affidavit of JOHN DELISLE, Esquire, Clerk of the Peace for  
the District of Montreal, Lower Canada.*

PROVINCE OF LOWER CANADA.

DISTRICT OF }  
MONTREAL. }

JOHN DELISLE, of the City of Montreal, in the Province of Lower Canada, Esquire, maketh oath and saith—that he hath been, since the month of September, one thousand eight hundred and fourteen, and continues to be, clerk of the peace in and for the said District of Montreal, and hath been, during six years now last past, and continues to be clerk of the crown in and for the said District. And the deponent further saith, that, in the whole course of the said periods, during which the deponent hath been clerk of the peace and clerk of crown as aforesaid, one uniform practice has prevailed with respect to prosecutions for petty larcenies and misdemeanors, in His Majesty's Court of King's Bench for the said District, by the Attorney General, or other crown officer charged with the conducting of criminal prosecutions; according to which practice, prosecutions for the said offences have been carried on

by the said Attorney or crown officer, in His Majesty's said Court of King's Bench, in cases in which the persons accused of the said offences have been in custody; the said Court of King's Bench being a Court of General Gaol Delivery for the said District. And the deponent further saith, that, since James Stuart, Esquire, His Majesty's Attorney General for this Province, assumed the duties of that office, no deviation whatever has taken place in the said practice; the same course having been pursued by the said James Stuart, in carrying on criminal prosecutions in His Majesty's said court, as was pursued by his predecessors in office, during the periods aforesaid; and in no instance, to the knowledge of the deponent, has any one prosecution been carried on by the said James Stuart, in His Majesty's said Court of King's Bench, which he believes would not, under like circumstances, have been carried on by the predecessors of the said James Stuart, in the said office of Attorney General. And the deponent further saith, that, according to the practise which has prevailed during the periods aforesaid, the depositions and papers on which prosecutions have been carried on by the Attorney General, in His Majesty's said Court of King's Bench, have been forwarded to him by the chairman of the Quarter Sessions and the Clerk of the Peace, in order that such prosecutions might be carried on by him. And the deponent has no knowledge of any criminal prosecutions having been ever carried on by the said James Stuart, in His Majesty's said court, the depositions and papers in relation to which were not forwarded to him for that purpose as aforesaid. And the deponent further saith, that the circumstance which has in many instances prevented the carrying on of prosecutions for petty larceny, in the Court of Quarter Sessions, has been the want of pecuniary means to pay for the subpoenaing of, and the allowance to witnesses; and this, in reality, has been, in this deponent's opinion, the impediment in the way of prosecutions for such offences in that court, and has rendered necessary the prosecution of them, in the Court of King's Bench. And the deponent further saith, that, in the evidence ascribed to the deponent, in the second Report of the Committee of Grievances of the Assembly of this Province, and which evidence is therein stated to have been given on the

18th of February last, an error has been committed in representing the deponent to have said, that fines were paid by him into the hands of the *Attorney General*; whereas, instead of the *Attorney General*, it should have been stated, that such fines were paid by him into the hands of the *Receiver General* of the Province.

(Signed) JOHN DELISLE.

*Sworn before me, at Montreal, this  
30th July, 1831,*

(Signed) J. REID, C.J.K.B., Montreal.

## No. 20.

*Affidavit of THOMAS ANDREW TURNER, Esquire, Foreman of the Grand Jury for the District of Montreal, in the Term of the Court of King's Bench for that District, held in March, 1830.*

## PROVINCE OF LOWER CANADA.

DISTRICT OF }  
MONTREAL. }

THOMAS ANDREW TURNER, of Montreal, in the District of Montreal, being duly sworn, deposeth and saith as follows:—I have resided in Montreal, in the said District, for more than thirty years, during twenty years of which period, I have, upon an average, served about once a-year as a Grand Juror in the Criminal Court of King's Bench, and also in the Courts of Oyer and Terminer and General Gaol Delivery for the said District. From the opportunities afforded me in this respect, I have a knowledge that, during the period aforesaid, Bills of Indictment have been laid before the Grand Juries of the said Courts, by the respective crown officers prosecuting for the Crown, for petty larcenies, misdemeanors, and other

offences cognizable in the Court of Quarter Sessions. I have observed no variation from the usual practice, in this respect, since James Stuart, Esquire, has filled the office of Attorney General. I do believe that Bills of Indictment for petty larcenies, misdemeanors, and such other offences, have generally been laid before the Grand Juries of the said Courts, against persons who were in custody, for I observed that they were generally arraigned in the dock, with the prisoners actually detained in goal, and tried shortly after having been arraigned. It has also happened occasionally, that persons accused of such minor offences have been indicted before said Grand Juries, from the circumstance of their having been bound over to appear at the said Courts.

I have acted as one of His Majesty's Justices of the Peace for the said district, for about nine years, and in such capacity have frequently sat in the Court of Quarter Sessions for the said district. From my experience in the last mentioned court, I am enabled to say, that no provision was made for the expenses of prosecuting, in the said Court of Quarter Sessions, petty larcenies and offences of the above-mentioned description, and no fund set apart to pay the necessary expences and allowances to witnesses; and that such offences must have been committed with impunity, unless the persons accused had been indicted in the said Court of King's Bench, or Court of Oyer and Terminer and General Gaol Delivery. This was found to be such an evil, that, in the term of the said Court of King's Bench, holden in March, 1830, the Grand Jury, in the presentment which they made, at the close of the court, complained of it in the following terms, which are a true extract from the said presentment:—"The Grand Jury further present, that, during the present term, a number of bills of indictment have been laid before them, for petty offences, which might have been (tried) in the Quarter Sessions, in the months of October and January last." I was foreman of the said Grand Jury, by whom that presentment was made, and as such I can safely say, that by what is contained in the foregoing extract, it was by no means intended to cast the least reflection upon James Stuart, Esquire, who then filled the office of Attorney General, but that the object of the Grand Jury was solely to direct the attention of



the Government to the practice that had so long obtained in that respect, to the end that funds might be provided for facilitating the prosecution of such offences, before the said Court of Quarter Sessions.

(Signed) THO. A. TURNER.

*Sworn before me, at Montreal, this 9th  
day of August, 1831,*

(Signed) GEORGE PYKE, J.K.B.

True Copy, J. STUART.

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No. 21.

*Affidavit of MICHEL LAFLEUR, of Sorel, Labourer.*

PROVINCE OF LOWER CANADA.

DISTRICT DE {  
MONTREAL. }

MICHEL LAFLEUR de Sorel, autrement appelé William Henry, dit district, Journalier, âgé de vingt sept ans, après serment prêté sur les Saints Evangiles, depose et dit comme suit:—Je demeure à Sorel, depuis douze ans. En mil huit cent vingt sept, au mois de Juillet, il y eut une election au dit lieu de Sorel, très contestée entre James Stuart, Ecuier, Procureur-General pour la dite province, et Wolfred Nelson, Ecuyer, Médecin. Cette election étoit pour choisir l'un ou l'autre, pour servir comme membre du parlement provincial.—Lors de cette election, je travaillois pour Louis Marcoux, qui demeuroid alors à Sorel, comme marchand, et qui reste maintenant à Yamaska, au même district. Depuis cette election, j'ai continué à travailler pour lui, jusques dans le mois d'Octobre de la même année. Vers la fin d'Aôut de cette année, pendant que j'étois occupé à décharger une barge pour lui, le dit Louis

Marcoux m'envoya chercher, et me demanda si je voulois amener un de mes hommes avec moi, et le traverser lui et d'autres personnes, à l'Isle d'un nommé Morrison, qui étoit une des Isles dependant de la paroisse de Berthier, située de l'autre côté du fleuve Saint Laurent, et presque vis-à-vis du dit Bourg de Sorel. Viens, viens avec moi, dit-il, tu gagneras plus, et je mettrai deux hommes à ta place, et à celle de celui que tu amènes avec toi. La-dessus, je lui dis que j'irois, et je me suis en consequence rendu chez lui avec un de mes hommes. Ayant vû partir de chez, le dit Marcoux, le nommé Joseph Allard de Sorel, scieur de long, avec une cruche, je m'attendois bien qu'il alloit chercher du *Rum*, chez le nommé Crebassa. Quelque tems après son depart, je fus au devant du dit Joseph Allard; l'ayant rencontré à-peu-près à moitié chemin sur son retour chez le dit Marcoux, nous avons bû à même le cruche, chacun à sa soif. Cette cruche pouvoit tenir environ un galon et demi, et me paroissoit pleine ou presque pleine de *Rum*. Arrivés chez Marcoux, celui-ci a fait préparer une chaloupe, et a fait embarquer sur icelle plusieurs personnes; entre ceux qui se sont embarqués sur la dite chaloupe, à la requisition du dit Marcoux, étoient les personnes suivantes, savoir, Joseph Allard, Gonzague Rouleau, Jean Crébassa, Noël Guillot, Antoine Hus dit Cournoyer, Pierre Bouage, et le nommé Des Jardins. Je ne me rappelle pas des autres, si toutefois il y en avoit; mais Mr. Marcoux étoit un du nombre. Quand je suis parti de Sorel, j'étois un peu pris de boisson, mais assez bien en état pour gouverner la chaloupe, que je crois avoir gouverné comme il convenoit, puisque je l'ai conduite à l'Isle appartenante à un nommé Morrison, laquelle est une des Isles de Berthier susdit. Je me rappelle très bien qu'en partant de Sorel, le nommé Joseph Allard, dont j'ai parlé, étoit dans la chaloupe. Dans le cours de la traversée de Sorel à cette Isle de Berthier, j'ai bû du *Rum* que je croyois venir de la cruche en question. Arrivé à l'Isle en question, que l'on disoit être l'Isle de Monsr. Morrison, je ne me rappelle pas au juste si j'ai bû et mangé: il y avoit de quoi faire l'un et l'autre. J'ai senti que ma raison étoit bien affoiblie; elle ne l'étoit cependant pas assez pour m'empêcher de me rappeler de ce qui s'y est passé, pourvû que ce fût quelque chose qui me frappât, mais je sais

que ma raison étoit trop affaiblie pour pouvoir me servir de guide dans mes actions. Cette Isle où nous débarquâmes, appelée l'Isle de Mons. Morrison, étoit séparée d'avec la terre ferme par un chenail d'environ quinze arpens. Pendant que j'étois dans l'état que je viens de mentionner, l'on fût chercher à Berthier Monsieur Joseph Douaire Bondy, qui étoit alors un juge de paix. Ce Monsieur est venu dans l'Isle en question, et m'a fait prêter serment sur une deposition contre un nommé Fontaine, qui avoit voté pour le dit James Stuart, Ecuyer, je me rappelle bien du fait. Mais je sais bien que je n'étois pas en état sur la part que je pouvois pretendre en paradis d'appeller Dieu à témoin de la verité de ce que je disois. Je n'étoit seulement pas en état de faire un marché, ou de contracter avec quelqu'un pour une entreprise. Je me rappelle très bien que le dit Monsieur Douaire m'a fait faire serment. Suivant mon opinion le dit Joseph Allard, qui étoit dans la dite Isle avec nous, étoit dans un état pire que le mien, et incapable de pouvoir se rappeler le lendemain de ce qu'il pouvoit faire alors. Le deposant declare que cette depositiont lui ayant été lue, elle contient la verité. Lecture faite, dit de plus qu'il ne sait signer.

(Signé) MICHEL <sup>Sa</sup> × LAFLEUR.  
<sub>Marque.</sub>

*Assermenté devant moi, ce 27e jour Juillet,  
une huit cent trente et un ; cette deposition  
ayant été par moi-même préalablement lue au  
dit Deposant.*

(Signé) PETER M'GILL, J. P.

True Copy, J. STUART.

## No. 22.

*Affidavit of WILLIAM M'LEAN, of Sorel, Boatman.*

## PROVINCE OF LOWER CANADA.

DISTRICT OF }  
MONTREAL. }

WILLIAM M'LEAN, of Sorel, otherwise called William-Henry, in the said district, Boatman, being duly sworn on the Holy Evangelists, deposeth and saith as follows, to wit:—I have lived at Sorel aforesaid, for about fifteen years. In the month of July, one thousand eight hundred and twenty-seven, there was a contested election there between James Stuart, Esquire, Attorney General for the said Province, and Wolfred Nelson, Esquire, Physician. In the month of August following, it might be about the fifteenth or twentieth, Louis Marcoux, then residing at Sorel aforesaid, but now residing at a place called *Yamaska*, Merchant, told me that he wished me to assist in ferrying or crossing some eight or twelve persons, to one of the islands belonging to Berthier, on the opposite shore of the River St. Lawrence, and said that he would pay me for my trouble. I went with Mr. Marcoux to his house, where I found eight or a dozen persons. A boat was prepared, some bread and butter put on board, together with a jar capable of containing about a gallon and a half, and which contained rum. We all got on board, Mr. Marcoux being with us. I was one of those who rowed the boat, and Joseph Allard steered her. We put ashore upon one of the Berthier Islands called Morrison's Island. On our arrival, Mr. Marcoux told us to eat and drink, while he would be going to Berthier, that is, the village of Berthier: he did not tell us for what purpose. We were there at the distance of about a mile from the said village. After an absence of about an hour or an hour and a half, Mr. Marcoux returned, with a Justice of the Peace, whose name I did not know, nor do I know it now. While Mr. Marcoux was absent, we did nothing but eat and drink. I observed that the others were drinking too much, and resolved to keep myself sober; I therefore drank but little. By the time Mr. Marcoux returned, they were all tipsy except myself: some

of them were very tipsy. Soon after the return of Mr. Marcoux, he inquired of us what we knew about certain persons who had voted for the said James Stuart, at the said election. The said Justice of the Peace swore us upon a Bible or book, which had a crucifix tied to it. After we were sworn, a man of the name of Kimber, who had crossed over from Sorel aforesaid before us, began to write. I suppose that he was writing what we said. I can swear positively that one Joseph Allard and one Michel Lafleur were on the island with me, and were sworn by the Justice of the Peace above-mentioned. Joseph Allard appeared to me to be very tipsy: Michel Lafleur was not so far gone. Mr. Marcoux, Mr. Crebassa, who was one of the party, Mr. Kimber, and myself, were the only sober persons of those who had left Sorel with me: the others appeared to me tipsy, some more tipsy than others. From what I could perceive of my companions, they were none of them sufficiently sober to make a bargain, or enter into any kind of a contract, or comprehend the nature of an oath. After we were sworn, we returned to Sorel. I received from Mr. Marcoux fifteen pence. What I swore to on the island was, that I was present when a man of the name of Thompson, of Sorel, had sold his lot and premises to Mrs. Kittson, reserving to himself the enjoyment and use of it during his life. I also swore there, that a Mrs. Hunes had, to my knowledge, made a deed of gift to one Joseph Bernier of one lot of land, situate at Sorel, with a reservation for her children, and of the other lot of land which she had adjacent thereunto. In consideration of the said deed of gift, the said Joseph Bernier was to support her during her life. Such were the facts which I swore to. I know not how Mr. Kimber wrote them down. I declare that I cannot write or sign my name.

*His*  
(Signed) WILLIAM X M'LEAN.  
*Mark.*

*Sworn to before me, this 1st day of August, 1831, at Montreal, in the said District; the foregoing having been by myself first duly read to the said WILLIAM M'LEAN,*

(Signed) JOS. SHUTER, J. P.

True Copy, J. STUART.

## COPY OF A LETTER

FROM

JAMES STUART, ESQUIRE,

TO THE

RIGHT HON. LORD VISCOUNT GODERICH,

&amp;c. &amp;c. &amp;c.

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*London, 8, Dover Street, 22d Oct. 1831.*

MY LORD,

In a Memorial addressed to your Lordship, from Quebec, and also in a Memoir in support of my humble Petition to His Majesty, I have had the honour of bringing under your Lordship's consideration, a satisfactory, and, I apprehend, conclusive answer to the charges of the Assembly of Lower Canada, upon which, by their Address to His Majesty, they have prayed for my dismissal from the office of Attorney General for that province. Besides these charges, however, I find that various animadversions on my conduct, and misrepresentations of it, are interspersed in certain proceedings of the Assembly, transmitted hither for your Lordship's consideration, which might produce impressions injurious to my character, if not repelled and refuted. I hope, therefore, your Lordship will permit me to use this mode of pointing out these animadversions and misrepresentations, and of establishing, that my conduct, in all the particulars referred to, has been unexceptionable and proper.—In proceeding to acquit myself of this easy task, I may perhaps be allowed to observe, that the course thus pursued by the Assembly is, I believe, without precedent, and is certainly of a nature (however unintentional it may have been on the

part of the Assembly) to operate great injustice to the officers of His Majesty's Government, who may be the objects of such a course of proceeding, as well as an extensive injury to the public service.—The House of Assembly having adopted the resolution of preferring charges against me, it would seem to have been reasonable, just and proper, that whatever was deemed criminal or culpable in my conduct, should have been embodied in these charges. All the grounds of imputed offence would thus have been made known to the party inculpated;—an opportunity would have been afforded to him to defend himself, and a fit determination on them might easily have been obtained. Instead of adopting this course, which reason and justice would prescribe, the Assembly, at the same time that they prefer and convict me of certain charges, bring under the notice of His Majesty's Government, it would appear, *ex parte* proceedings, unconnected with these charges, in which are to be found animadversions, untrue allegations, and misrepresentations, injurious to my character. Hence cause for impressions to my disadvantage, and probably permanent injury, is afforded; while an opportunity for self-defence and justification, or even for explanation of any kind, is withheld. This course of proceeding, I beg leave in all humility to state, appears to me to be most unjust towards the person against whom it is adopted, as being calculated indirectly, on the false, unfounded, and malicious statements of irresponsible individuals, to injure him in credit and character, without cause, without hearing or trial, and without means of redress on his part; and to be highly injurious to His Majesty's service, as having the effect of bringing a public officer, and, through him, the Government itself, in some degree, into disparagement and discredit; thus impairing the usefulness and efficiency of both, while the gratification of private malignity, a purpose not intended by the Assembly, is alone accomplished.—Either the statements of facts contained in the proceedings now referred to, did or did not, in the opinion of the Assembly, afford sufficient cause for imputing official misconduct to me: if they did, charges against me, grounded on them, ought to have been exhibited: if they did not, these statements, it appears to me, ought not to have been extracted from the Journals of the Assembly, to be submitted to His Majesty's



Government, or to be put into public circulation, to my injury.

At the same time that I have deemed it a duty, therefore, respectfully to solicit your Lordship's attention to the manner in which the animadversions and misrepresentations, as to my conduct, have been brought under your Lordship's notice, I most readily and willingly proceed to point out and refute them. They are to be found in the Report of a Committee of Grievances, on the Petition of Edward Glackmeyer, in a Report and Resolutions of the same Committee, on the Petition of William Lampaon, in which Resolutions the Assembly has concurred, and in detached statements of individuals, unconnected with any subject before the Committee. In this order, I shall beg leave to advert to them.

In the first of these Reports, my conduct is made the subject of animadversion in two particulars;—1st, In having received fees on new Commissions for attorneys and notaries, on the occasion of the demise of His late Majesty; 2d, In having introduced alterations in the Commissions of Notaries, by which these Commissions are assimilated, it is said, to the Commissions of Public Officers, whose appointment depends on His Majesty.

That these animadversions of the Committee of Grievances may be duly appreciated, it is necessary briefly to state what was done by the Government of Lower Canada, with respect to the issuing of new Commissions, after the demise of His late Majesty, and what acts of official duty were performed by me, in relation to this matter. On the 7th December, 1830, a circular letter was addressed by Lieutenant Colonel Glegg, the Governor's Secretary, to the Judges and Law Officers of the Crown, requiring them "to report, with all practicable despatch, "for his Lordship's information, what effect (in their opinion) "the demise of His late Majesty George the Fourth would have "on the Commissions of Public Officers in this Province, after "the lapse of six months from that event, and whether a renewal of such Commissions would be of indispensable necessity, "before the expiration of the said period of six months." Upon this reference, the Chief Justice of the Province, the Chief Justice for the District of Montreal, and all the Judges, with

the exception of two, and all the Law Officers of the Crown, concurred in opinions separately given, that the Commissions of Public Officers in the colony would be determined at the expiration of six months from the demise of His late Majesty, and that the renewal of them, before the expiration of that period, would be indispensably necessary. In consequence of these opinions, the Governor of the Province, by an Order in Council, directed the Provincial Secretary to publish in the Newspapers a notice, by which persons holding Commissions, during pleasure, under His Majesty's Provincial Government, which, at the time of the demise of His late Majesty, were in force, and would continue to be so, by statute, till the 26th December, might be notified, that their new Commissions, rendered necessary thenceforward by His late Majesty's demise, would be delivered to them on application at his office. At the same time, an order of the Governor was conveyed, in a letter from his Secretary, to the Attorney General, directing him to give his assistance to the Secretary of the Province, in the issuing of new Commissions, by preparing such drafts of them as might be required. No authority whatever was exercised by the Colonial Government, as to the issuing of new Commissions, except in the particulars now mentioned. In the course thus taken by the Government, I became its humble instrument, in execution of its express orders, by performing three acts of official duty—I gave an opinion, as required by the Governor's order of the 7th December, 1830, in which the Chief Justices and Judges of the land, and the other Law Officers of the Crown, concurred; I prepared the draft of a notice, which was approved by the Governor in Council, who ordered it to be published by the Secretary of the Province; and I prepared such drafts of Commissions, as were required at my hands by that officer. It was not to have been imagined, that cause of complaint, either of the Colonial Government, or myself as one of its officers, could have been found in these facts. The measure of issuing new Commissions was adopted on the highest authority within the colony, and was grounded on the best legal advice that could be obtained, that of the Judges and Law Servants of the Crown. The notice which was published under this authority and advice, it is also to be

observed, was expressly and exclusively addressed to those public officers only, whose commissions by law would expire at the end of six months from His late Majesty's demise. At the same time, no obligation was imposed on any public officer to renew his commission, it being left to his discretion to do so or not, as he might be advised, and on his own responsibility. In this, as in other cases, depending on a rule of law, or an enactment of the legislature, it was not competent to the Government to prescribe an interpretation of it. A specification of the officers on whom it might be incumbent to renew their commissions could not therefore proceed from the Governor of the Colony: the law itself was to be referred to by the individuals themselves, as governing this point: and the cases in which a renewal of commissions might or might not be necessary, could ultimately be determined by the King's Courts alone; though on this, as on some other recent occasions, in Lower Canada, their authority, if not superseded, was certainly encroached upon in an extraordinary manner by public meetings, called for the purpose of determining and settling the law on this subject, at which resolutions to that effect were passed. The decisions of these meetings are even referred to in the Report of the Committee of Grievances, with approbation, and, it would appear, as constituting some authority. No reference, however, was ever made to me by the Colonial Government, on the point now adverted to, and I was neither required to give, nor did ever give, any opinion as to the description of public officers, whose commissions would or would not require renewal. In what respects Public Notaries, in particular, I was never called upon to express, nor have I ever given any opinion as to the necessity of the renewal of their commissions. These being the general facts connected with the animadversions of the committee, on my conduct, in the issuing of new Commissions, I now beg leave to answer, specifically, the two animadversions above mentioned.

With respect to Fees on the new Commissions of Attornies and Notaries, I have to observe, that Fees on Public Commissions are received, not by the Attorney General, but by the Secretary of the Province, who demands and receives fees, at his peril, on Public Commissions, and afterwards accounts to the

Attorney General, from time to time, for his proportion of them. If, therefore, fees had been improperly taken, (which is not the fact,) the culpable officer would not have been the Attorney General, but the Secretary of the Province. In this, as in other instances of the proceedings of the Assembly against me, I cannot but remark, as evincing a singular proneness to fasten the imputation of offence on me, that I am made chargeable for the supposed misconduct of other public officers, which is imputed to me, and me only, as if it were mine; and in this particular instance, that which is deemed innocent in another, is declared to be culpable in me. The effect of such a spirit in leading to the erroneous conclusions which have been adopted by the Committee of Grievances, your Lordship cannot fail to appreciate. But, in truth, the Secretary of the Province only discharged his duty, in taking fees on the new Commissions of such attorneys and notaries as required them: these Commissions were prepared at their express desire, and they were of course equally bound to pay for them, according to the established tariff, as for the former Commissions which they held. What renders this animadversion of the Committee the more extraordinary is, that the attorneys and notaries, who solicited and obtained new Commissions, have not complained of the payment of fees on them; and no reference appears ever to have been made to the Committee on this head. Mr. Glackmeyer, a notary, who alone petitioned the House, and whose Petition was referred to the Committee, was not one of the number of notaries who solicited and obtained new Commissions, and could not therefore complain of the payment of fees. The Committee has, therefore, it would appear, directed its attention to a matter not brought under its cognizance; and, in doing so, has evidently misapprehended the subject, and mistaken its object, in imputing blame to me, on the score of fees taken by the Secretary of the Province, on the new Commissions of attorneys and notaries, who applied for them.

In the second of the animadversions above-mentioned, alterations, it is said, have been made in the Commissions of Notaries, by which "these Commissions are assimilated to the Commissions of Public Officers, whose appointment depends on His Majesty." What is meant by these latter words, I do not

distinctly understand.—Notaries are public officers, vested with considerable powers, and charged with very important duties, among which are the preparing, authenticating, and safe custody of all titles to land held under the French tenures.—The appointment of these officers in Lower Canada proceeds from, and has always been made by the Crown: it therefore depends on His Majesty; and I am at a loss, therefore, to conceive on what ground such appointments are supposed to differ from other appointments which depend on His Majesty, and with which an assimilation, it would seem, is held by the Committee of Grievances to be improper. But, in reality, no alteration whatever have been made in the Commissions of Notaries, by which the nature, duration, or effect of these Commissions could in the smallest degree be changed or affected. Having for the first time been required to prepare the Draft of a Notary's Commission, I became responsible for the correctness and sufficiency of the Draft I might furnish. The form in use for Commissions of Notaries was under the Governor's Private Seal. In the appointment of these, as of other public officers, it appeared to me, that the Public Seal of the Province ought to be used; and my opinion on this point might (if it were necessary) be justified, not only by obvious reasons, but by reference to high authorities. Deeming it proper, therefore, to prepare my Draft in the form of an Instrument, to be passed under the Great Seal, it became necessary that His Majesty's name, instead of that of the Governor, should be used, and with it, the usual style in which grants of office, or other things, by His Majesty, are made. As part of this style, it is stated, in my Draft, that His Majesty, "of his especial grace, certain knowledge, and mere motion," confers the appointment; and the Draft terminates with the usual conclusion of an Instrument under the Great Seal, viz.: "In testimony whereof, we have caused these our letters to be made patent," &c. These words of mere form, it must excite surprise when it is mentioned, are the "alterations" in the Commissions of Notaries, to which the Committee of Grievances applies its censure, "as being contrary to the spirit of the Ordinance of the 25th Geo. III. c. 4., and as having the effect of assimilating these Commissions to those of public officers, whose appointment depends upon His

Majesty." The notions of the Committee of Grievances on this head, I may be permitted to mention, are somewhat singular and peculiar, to which it will not be expected I should oppose any argument or observation; it being too plain, to persons who understand the English language, that these words, which unfortunately have given offence to the Committee, are perfectly harmless, and merely words of course, in the place in which they are found.—When the use of such words is made a ground of grave censure, it will be readily conceived, that the animadversions of the Committee of Grievances of the Assembly of Lower Canada may be incurred for slender causes.

Having thus disposed of the two specific animadversions of the Committee of Grievances, to my prejudice, on the head of New Commissions, it will not, I hope, be deemed improper if I should add a few words, as to the constitutional means that might have been used to obviate the inconveniences upon which the Committee has been disposed to lay so much stress. The necessity of issuing new Commissions, within the colony, might have been prevented by an act of the colonial Legislature in one of its sessions which preceded the demise of His late Majesty. This measure, having been omitted previous to that event, might have been adopted during the six months which succeeded it, and the convocation of the colonial Legislature, by the Governor of the Province, at a somewhat earlier period than was fixed upon, would have facilitated its adoption. Even after the session was commenced, in January last, all inconveniences as to the Commissions of Notaries might have been obviated, by an act of the Legislature at that time. These remedies it was within the power of the members of the Committee of Grievances to suggest, and of the Assembly to apply. It is to be regretted, therefore, that, overlooking such remedies, my conduct, without the shadow of a cause, has been impeached by the Committee of Grievances, as having contributed to inconveniences, which might have been so easily prevented by the Assembly itself, but to which I have been in no degree accessory. Out of the limits of Lower Canada, it may excite surprise, that attornies should be appointed by commissions during pleasure, instead of being admitted to the exercise of their profession, as in other parts of His Majesty's dominions,

by His Majesty's Courts of Justice. This peculiarity, with the inconveniences that may be incident to it, obtains under a law of the Province; and as to this subject of complaint also, on the part of the Committee, the constitutional remedy would have been found in an act of the Legislature, repealing the law under which Commissions of Attornies are now issued, and substituting other proper provisions instead of it. Not having the honour of being a member of the Assembly of Lower Canada, and never having been consulted by His Excellency Lord Aylmer, on the subject in question, or indeed on any other subject, it has not fallen within the limits of my duty to suggest or promote the adoption of any of the remedies now adverted to.

Your Lordship's attention is now respectfully requested to the second document above mentioned, containing animadversions and misrepresentations to my prejudice, namely, the report and resolutions of the Committee of Grievances, on the Petition of William Lampson. In adverting to this document, I must beg leave to submit to your Lordship some explanations as to matters of fact, in order to render my refutation of what has been alledged against me, in this form, the more complete.

In July, 1822, a lease for a term of twenty years was granted, by the Provincial Government of Lower Canada, to a Mr. John Goudie, of an extensive tract of country in that Province, known by the name of the King's Posts, upon which trade with the Indians for a long period of time has been carried on.—In the succeeding year, a claim was preferred to the Government, on the part of Mr. Goudie, to the Post of Portneuf, then in the possession of the Hudson's Bay Company, as lessees of the proprietors of a Seigniory called *Mille-Vaches*, adjoining to the King's Posts; which Post of Portneuf was represented by Mr. Goudie, to be comprised within the limits of the King's Posts.—Upon the investigation of this matter, which then took place, although an opinion favourable to the pretensions of Mr. Goudie had been given by Mr. Uniacke, the Attorney General, and Mr. Vanfelson, the Advocate General, the Provincial Government, after the production of the titles of the adverse party, and, among these, of an ancient procès verbal of survey of *Mille-Vaches* in 1675, including Portneuf, as part of that



seigniory, was of opinion that the proprietors of *Mille-Vaches* were lawfully in possession of the Post of Portneuf, as being part of their seigniory, and ought not to be disturbed in it. The decision of the Provincial Government being adverse to the claim of Mr. Goudie, it was deemed unnecessary that any action should be brought, for the establishment of boundaries between the King's Posts and *Mille-Vaches*. In this decision Mr. Goudie acquiesced, and continued to possess the King's Posts within limits not comprising the Post of Portneuf, which remained in the exclusive possession of the proprietors of *Mille-Vaches*. He afterwards assigned his lease to Mr. James M'Dowall, who entered into possession of the Posts within the same limits, and acquiesced in the adverse possession of the Post of Portneuf by the lessees of *Mille-Vaches*, without disturbing them in it.—The lease of the Posts was subsequently assigned by Mr. M'Dowall to Mr. William Lampson, an American, who received possession of them within the same limits, within which Goudie and M'Dowall had previously possessed them. Under these circumstances, the right of the proprietors of *Mille-Vaches* to retain the undisturbed possession of the Post of Portneuf, till evicted by the judgment of a competent Court of Justice, could not be questioned.—It does not appear that their continued possession of Portneuf was in fact interrupted or materially infringed, till the Spring of 1830, when, in open violation of that possession, Mr. Lampson commenced a series of acts of aggression, upon the servants and property of the Hudson's Bay Company, the lessees of *Mille-Vaches*, which he has since attempted to justify, by a renewal of the claim to Portneuf, as being comprised within the King's Posts; although he could not be ignorant, that no excuse for them could be derived from such a naked claim, whether just or unjust, opposed to legal possession. The acts of aggression thus committed, gave occasion to the adoption of criminal and civil remedies at the instance of the agent of the Hudson's Bay Company. The part which it became my duty to take in the prosecution of these remedies having been most untruly misrepresented, it is proper I should here state in what particulars I was called upon to act, and have acted, in the differences between the servants of the Hudson's Bay Company and Mr.

Lampson, now referred to. The first call on me for official duty, in these matters, was an order of reference made to me by his Excellency Sir James Kempt, then administering the Government, dated the 5th August, 1830. The circumstances which gave occasion to this order were these:—A complaint on oath had been made to Mr. Christie, the Police Magistrate at Quebec, by Mr. Cowie, the chief factor of the Hudson's Bay Company at *Mille-Vaches*, that he and other servants of the company, while engaged in their lawful pursuits, had been, within the limits of that seignior, feloniously assaulted by Peter M'Leod the elder, the chief clerk of Mr. Lampson, and a number of hired men in his employment, and had been robbed of provisions and various effects, of which they were possessed. Upon this complaint, Mr. Christie issued a warrant for the apprehension of M'Leod, directed to Charles Prevost, who proceeded to a trading post called *Islet à Jeremie*, for the purpose of executing it. He there found M'Leod, who was apprised of his approach, at the head of an armed party of men, to the number of one hundred and more, consisting of Indians and white men, collected together for the avowed purpose of resisting and preventing the execution of the Magistrate's warrant, and was compelled by M'Leod and his party, *re infecta*, to return to Quebec, without being able to execute the warrant. The Police Magistrate was then applied to, for a warrant against M'Leod and his principal co-delinquents, in this outrageous resistance to public authority; and on his refusal to grant it, application was made, by the Hudson's Bay Company, to his Excellency the Administrator of the Government, for his interposition, to render these persons amenable to justice. Upon this application, his Excellency having been pleased to make his order of reference above mentioned, requiring my opinion whether a warrant ought to be issued, for the obstruction of public justice complained of, I had the honour of making a report to his Excellency on this subject, of which I beg leave to annex a copy.\* In consequence of this report, a warrant was issued for the apprehension of M'Leod, and others of the principal ringleaders, in opposing the execution of the Magis-

\* Vide Appendix, No. 1.

trate's warrant ; but it was not executed, as they had, in the mean time, withdrawn themselves into the interior of the country, and could not be reached. Various depositions were afterwards put into my hands by the Clerks of the Crown, for the districts of Quebec and Three Rivers, charging the agents and servants of Mr. Lampson, with offences committed on the servants and property of the Hudson's Bay Company; and with these there were also delivered to me depositions, charging the servants of the latter with offences against persons in the service of the former, in the district of Quebec. According to the practice which has always prevailed in Lower Canada, the Attorney General is charged with the duty of carrying on criminal prosecutions in the Courts of King's Bench, in the several districts of the Province; and upon the depositions put into his hands, before the opening of these courts, he prepares the necessary indictments, which are in readiness to be preferred as soon as the court assembles. It became, therefore, incumbent on me, as a matter of course, to prepare and lay before the Grand Jury, such indictments as were warranted by the depositions which had been delivered to me, as well against the servants of Mr. Lampson as against those of the Hudson's Bay Company. This duty was discharged, by me with perfect impartiality between the parties concerned. The criminal court for the district of Three Rivers being held before that for the district of Quebec, the depositions to be acted on in the former district first received attention. By these it was substantiated, that one Charles M'Carthy, a clerk of Mr. Lampson, with a party of men under his orders, had assaulted one Antoine Hamel, a clerk, and three hired men, in the service of the Hudson's Bay Company, while engaged in their trading pursuits, had made them prisoners, had taken them to several trading posts of Mr. Lampson, in the interior of the country, and after compelling them, as prisoners, to go from place to place as suited the convenience of their captors, had at last set them at liberty in a remote part of the province, several hundred miles from the place where they had been captured. For this offence an indictment was laid by me before the Grand Jury for the district of Three Rivers, and was returned a true bill against all the

persons named in it. One of them only, a hired man of the name of Moïse Villeneuve, was in custody and pleaded guilty to the indictment; against the others, who had not yet returned from the Indian country, into the civilized parts of the Province, process was ordered to issue. At Quebec, as soon as the Court of King's Bench was opened there, in September last, I laid before the Grand Jury, as it was my duty to do, indictments as well against the servants of the Hudson's Bay Company, as against those of Mr. Lampson, upon all the charges contained in the depositions which had been put into my hands. The indictments thus preferred, at the instance of Mr. Lampson's servants, were all ignored by the Grand Jury. Of the indictments preferred at the instance of servants of the Hudson's Bay Company, two were ignored, and three were returned true bills. One of the former was a bill for the robbery above mentioned, complained of by Mr. Cowie. The Grand Jury, in ignoring this bill for the felony charged in it, requested me to lay before them a bill for a misdemeanor, on the same facts; and I, therefore, laid before them a bill charging M'Leod and eight other individuals, servants of Mr. Lampson, with "a riot, "assaulting and beating Robert Cowie and others, and forcibly "taking from and out of the lawful custody of the said Robert "Cowie divers goods and chattels, and converting the same to "their own use." This indictment was returned by the Grand Jury a true bill; and they also found a bill against the same M'Leod and four other individuals, servants of Mr. Lampson, for a riot and forcibly opposing and preventing the execution of the warrant of Mr. Christie, the Police Magistrate above mentioned. It would have been highly desirable, in order to check effectually the disorders that gave occasion to these indictments, that the trials of them should have taken place without delay. But the defendants insisted on their right to traverse; and, in consideration of the alledged difficulty to be experienced in travelling from the King's Posts to Quebec, in the succeeding term of March, they applied for, and obtained, a postponement of their trials till September following—that is, for one whole year. As affording some security against a renewal in this interval, of the outrages which had been made the subjects of indictment, the defendants, at my instance, were put under

recognizances, with sureties, to keep the peace during the time to elapse previous to their trials. With these proceedings my official ministry terminated, as to the criminal remedies which had been resorted to, by the parties respectively.—The next official duty required from me was an opinion, in relation to certain *qui tam* actions which had been brought, on a provincial statute, against the servants of Mr. Lampeon, for having, as trespassers, cut down trees within the limits of *Mille-Vaches*. Upon the reference made to me on this subject, at the instance of Mr. Davidson, the Justice of the Peace before whom the actions were pending, I was of opinion that the plea of prescription set up by Mr. Lampeon's servants was well founded, and reported accordingly. This opinion was acted upon by Mr. Davidson, who dismissed the actions.

Soon after a Petition of the Hudson's Bay Company, through their agent at Quebec, was presented to His Excellency Lord Aylmer, Administrator of the Government, in which, among other things, it was represented—"That Mr. Lampeon, the  
"present lessee of the King's Posts, having lately attempted  
"by every means in his power, to drive the Hudson's Bay  
"Company from the possession of the post of Portneuf and the  
"seigniorship of *Mille-Vaches*, for his own private purposes, had,  
"by the means of one George Linton, laid informations against  
"Robert Cowie, William Davis, and Elie Boucher, three of  
"the agents and servants of the Hudson's Bay Company  
"(founded upon the ordinance 17 Geo. III. c. 7. made to prevent the selling and distributing liquors to Indians, without  
"license from the Governor of the Province of Quebec, &c.)  
"for selling and distributing liquors to Indians at Portneuf  
"aforesaid." It was further represented in the same Petition—  
"that although the Petitioners were fully convinced that the  
"said ordinance was never intended to apply to trading companies having a right to traffic with the Indians, and although  
"it was apparent that these proceedings were vexatious, and  
"carried on for the purpose of private gain, without any view  
"to the interest of the public; yet the Petitioners, for greater  
"security in preventing the vexatious and oppressive application of this ordinance for the past, and guarding against the  
"same misapplication of it to their future dealings and inter-

"course with the Indians, were desirous of obtaining, for themselves and their agents and servants, a pardon for any acts of this nature done in past time, and full authority to them for the future to distribute liquors to the Indians, without which they could not carry on their lawful trade." On these grounds, the Petitioners prayed for a pardon for past offences of this nature, and a license to distribute spirituous liquors, in future to the Indians. This Petition, by order of His Excellency the Administrator of the Government, was referred to me, and I was required "to state, for His Excellency's information, whether he was empowered by the laws in force to grant the licence prayed for, and whether it was expedient that the prayer of the Petition should be granted." Being perfectly aware that the Indian trade, with the sale and distribution of spirituous liquors incident to it, had been carried on in both the Canadas for a long period of time, without any licence whatever, and in the same unrestrained manner as any other description of trade, and having besides, during a personal experience of nearly forty years in legal proceedings in Lower Canada, never heard of any such *qui tam* actions as those in question having been brought, I was lead to suppose, that the provision of the ordinance 17 Geo. III. c. 7. referred to in the Petition of the Hudson's Bay Company, must have been repealed by a subsequent law. Upon examining the subject, I found my impression on this head verified, and that by an ordinance of the 31 Geo. III. c. 1. the provision on which the *qui tam* actions of Linton were grounded, had been, in the plainest and most unequivocal terms, repealed; from the period of which repeal, no licence whatever had been granted for trade with the Indians, or for the sale or distribution of spirituous liquors to them. I therefore reported to His Excellency my opinion,\* that this repeal had taken place, and that neither the pardon nor the licence applied for was necessary. Upon my report, His Excellency, it would appear, declined compliance with the prayer of the Petition, and a copy of the report was delivered by his secretary to the agent of the Hudson's Bay Company, as containing the reason of his determination. The *qui tam* actions referred to in the

\* Vide Appendix, No. 2.

Petition, were afterwards brought to a hearing before Messrs. Neilson, Wilson, and Duchesnay, three Justices of the Peace for the District of Quebec, the latter being also one of the Provincial Aides-de-camp of His Excellency. Although the repeal of the ordinance on which these actions were founded, it appears, was insisted upon by the Honourable Mr. Primrose, the attorney and counsel of the defendants, and although the Magistrates were by him made acquainted with the report on which the pardon and licence had been refused, they, nevertheless, convicted the defendants of the alleged offences for which these actions were brought, and, besides imposing on them a penalty of five pounds, sentenced them to an imprisonment of twenty-four hours in the common jail for the District of Quebec. Boucher, one of the defendants, being on the spot, was immediately imprisoned under this conviction; against the two others, Messrs. Cowie and Davis, who were at *Mille-Vaches*, distant about one hundred and fifty miles from Quebec, warrants were forthwith issued for their apprehension and commitment, to undergo at Quebec an imprisonment of twenty-four hours. After Boucher was lodged in jail, under an order of Mr. Sewell, the Sheriff of the District of Quebec, who, it would appear, took upon himself to execute the Magistrates' sentence of imprisonment, without any warrant in writing from them to that effect, a Petition for a Writ of Habeas Corpus to relieve him from his imprisonment, was presented by the Honourable Mr. Primrose on his behalf to the Chief Justice of the Province, and, on his refusal to grant the Writ, a similar Petition was presented to the Honourable Mr. Justice Kerr, one of the Justices of the Court of King's Bench, who ordered a Writ of Habeas Corpus to issue, as prayed for. Under this writ, Boucher was brought before Mr. Justice Kerr, but before the hearing of his case was concluded, the period of his imprisonment expired, so that he was discharged on this ground, as a matter of course. Similar Petitions were afterwards presented to Mr. Justice Kerr on behalf of Messrs. Cowie and Davis, to be liberated from their imprisonment, and upon the return of the Writs which he granted they were discharged. The defendants having afterwards obtained Writs of *certiorari*, to bring into the Court of King's Bench the convictions which



they had undergone before the Magistrates, applications were made by the latter to His Excellency the Administrator of the Government, that he would be pleased to direct Mr. Vanfelson, the Advocate General, who had advised and assisted in prosecuting the *qui tam* actions, to appear on their behalf, on the return of the Writs, and sustain the convictions at the public expense. These applications were referred to me by His Excellency, who required me to state "my opinion as to the course it would be advisable to adopt, in regard to these applications for the assistance of the Advocate-General, instead of mine, on the ground of my having already delivered an opinion, in opposition to the decisions given by the applicants in the cases in question." Upon this reference, I had the honour of reporting my opinion,\* with reasons, in detail, in support of it, that the Magistrates had no claim to, nor was it fit or expedient they should receive, the assistance for which they had applied, from any of His Majesty's law servants, at the public expense. Notwithstanding this opinion, and, it would appear, without any other reference on the subject, His Excellency was pleased to comply with the application of the Magistrates, by directing Mr. Vanfelson, the Advocate General, who was the retained counsel of the private prosecutor, as already mentioned, to support the convictions in question, at the public expense. Here terminated my official duties with respect to the *qui tam* actions; and no other official duty was discharged by me, in relation to the differences between the Hudson's Bay Company and Mr. Lampson.

Having thus explained the instances in which I acted officially in these matters, it remains, that I should explain the professional duty that I have been called upon to discharge, in civil suits between the same parties. In the Spring of the year 1830, an action of Detinue, or "*Revendication*," as it is called in the Law of Lower Canada, was brought by Mr. Lampson against William Davis and Robert Cowie, the former being a clerk, and the latter the chief factor of the Hudson's Bay Company, at *Mille-Vaches*. By this action, Mr. Lampson sought to recover thirteen packs of furs, of the alledged value of one

\* Vide Appendix, No. 2.

thousand pounds, which he stated to belong to him, and to be wrongfully withheld from him by the defendants ; and, on his affidavit of these facts, he obtained an attachment, as permitted by the law of Lower Canada, under which he caused to be seized and attached the furs thus demanded. The declaration in this action, in the course of my professional practice, was put into my hands by the defendants, with a request that I would charge myself with the defence of it. I did not hesitate to comply with this request ; not having the slightest idea that, in doing so, I was to become criminal in the eyes of a Committee of Grievances of the Assembly of Lower Canada, for an act which I then considered, and must still be permitted to consider, as one of the most innocent of my life.—The next call on me for professional services occurred in the course of the last Autumn. The agent of the Hudson's Bay Company then applied to me for my advice, as to the civil remedy to be taken, on behalf of that Company, in order to cause them to be reinstated in the possession of part of the Seigniorship of *Mille-Vaches*, of which Mr. Lampson then recently before, by force and violence, had dispossessed them, and recover damages for the injury thus sustained by the Company. The facts of this case, as stated to me, were, that after the postponement of the criminal trials, and the giving of security by the defendants to keep the peace, as above mentioned, one of the defendants, Peter M'Leod, under the orders of Mr. Lampson, had proceeded with a party of men to the number of twenty-five or thirty, supplied with arms and stores, to the Seigniorship of *Mille-Vaches*, and had there forcibly taken possession of a tract of land of which the Company had been quietly possessed, as making part of that Seigniorship, from the period of the lease of it ;—that this party of men had, under the same orders, and by force and against the will of the servants of the Hudson's Bay Company, proceeded to erect, and had erected a house, buildings, fence, &c. on the same tract of land, of which they continued to retain possession. I could have no difficulty in pointing out to the agent of the Company the civil remedy provided for such a wrong, namely, the French action of "*Réintégrande*," which singly and alone affords the redress, that, under the English Law, would be obtained by an action of trespass, and an indict-

went for a forcible entry and detainer, and in which, as in the latter remedy, the title to the land cannot be brought in question; the whole litigation in such cases turning exclusively on two facts, possession and forcible disseisin. At the request of the agent of the Company, I consented to institute, and did institute, this action of "*Réintégrande*," to obtain the legal redress which was sought; and I did so, with as little consciousness of guilt, as in charging myself with the defence of the action of detinue above mentioned.

At this stage of his differences with the Hudson's Bay Company, Mr. Lampson seems to have deemed it prudent and necessary to transfer the cognizance of them, from His Majesty's Courts of Justice, in which the parties might and ought to expect justice, to other branches of the Government. His first object appears to have been to implicate the Crown in the litigation in which he had involved himself; and, under the false pretence that its rights and interests were concerned, to induce the colonial Government to countenance and assume the defence of its illegal acts. Incidentally to this course of proceeding, it was found expedient to assail me personally, by false allegations affecting my character, and, as in some other proceedings which have recently occurred in Lower Canada, to nullify the office of Attorney General, by giving to that officer the character of an accused or suspected person. A convenient diversion is thus made in favour of the guilty who are under accusation, and the prosecutions against them, which it is the duty of the Attorney General to carry on, are thereby either defeated or injuriously delayed; while private resentments are gratified, at the expence of public justice.

With these views, it would appear, Mr. Lampson, on the 21st December, 1830, presented a Petition to His Excellency Lord Aylmer, Administrator of the Government, to which some attention is due, as having been the precursor of that which he afterwards presented with amplification to the House of Assembly, and as having, by its success it is probable, given occasion to the latter. In this Petition, Mr. Lampson, among various unfounded statements, calls the attention of His Excellency, in an especial manner, to the action of "*Réintégrande*" above mentioned, as being "*a subject of vast importance to the*

*“just rights of the Crown, and worthy of His Excellency's most serious consideration. An action,”* he proceeds to state, *“has lately been instituted by the Hudson's Bay Company, as lessees of Mille-Vaches, by the ministry of the Attorney General, against your Petitioner and his servants, for supposed trespasses, near the River Portneuf (the scite in dispute) to which both the Hudson's Bay Company and your Petitioner, as lessee of the King's Post, lay claim; a copy of the Writ and Declaration served on your Petitioner, is herewith submitted, and your Petitioner, at the same time, prays most humbly for the interference of the Crown, to afford him the necessary assistance to defend the said action.”* He proceeds further to state—*“The result of this action must be of the utmost importance to the Crown in this particular, that an extensive tract of valuable land will be wrested from the Crown, without title, should the lessees of Mille-Vaches, countenanced by the Attorney General, succeed in the said action.”* The Petition concludes with the following remarkable paragraph:—*“That your Petitioner, in laying his claims before your Excellency, for mature consideration, cannot pass over in silence, but must be permitted to express his regret, that the leading Crown Officer, (the Attorney General) should be found zealously engaged in advocating an interest so adverse to the true interests of the Crown, as that set up by the owners of Mille-Vaches, and their lessees, and that your Excellency will therefore give mature consideration to whom this Petition is to be referred, to afford such relief and impartial justice, as your Petitioner is so fully entitled to. Wherefore, &c.”*

It would have been most desirable, and I apprehend was to have been expected, that His Excellency Lord Aylmer, as well from a considerate regard for the public and private interests involved in this Petition, as with a view to the immediate investigation of the injurious imputation it contains on the character and honour of a public officer of high trust in the colony, would have unhesitatingly referred this Petition to His Majesty's law servants, including the Attorney General, the inculpatcd officer, for their report on the allegations of the Petitioner. The concluding paragraph of the Petition, it might

have been expected, would, in the opinion of His Excellency, have rendered this reasonable course urgently necessary and proper. That this course was not adopted appears the more extraordinary, as in a letter to me from Lieutenant Colonel Glegg, Secretary to His Excellency, dated the 30th December, 1830, upon the subject of Mr. Lampson's Petition, and with reference to my request, that if any imputation against me had been made or insinuated, it might undergo immediate investigation, His Excellency was pleased to give the most positive assurances that "no malicious insinuations regarding my character had reached his ears; that he was an entire stranger to any such insinuations, and had they been conveyed to him, he would have imparted them to me." It is fit that your Lordship should be informed, that not only were the contents of this Petition withheld from me, at the time it was acted upon by his Excellency, but, in fact, I did not become informed of them till the Petition was published in the month of April last, among other papers laid before the House of Assembly, by his Excellency.

Omitting to require the report of the Attorney General, or of any other of the law servants of the Crown, on the Petition of Mr. Lampson, his Excellency was pleased to adopt the statements contained in that Petition, as the ground of his determination, by which the Attorney General was peremptorily ordered to institute an action for the establishment of boundaries between the King's Posts and *Mille-Vaches*, without having been afforded any opportunity for ascertaining the sufficiency of the grounds on which such an action was to be instituted, and without having been previously required to give any opinion respecting them, or in any manner consulted on the subject. In compliance with his Excellency's peremptory order, excluding the exercise of any judgment or discretion on my part, this action was instituted by me, on the 16th of February last. And I beg leave to refer your Lordship to the correspondence\* hereto annexed, which preceded the institution of it, by which your Lordship will become accurately informed of the peculiar and unusual circumstances under which that measure was adopted.

\* Vide Appendix, No. 4.

It appears that subsequently, on the 1st of March, a Petition was presented by Mr. Lampson, to the House of Assembly. Of the proceedings had on this Petition, as well as of the transmission of them to this country, for your Lordship's consideration, I remained ignorant, until I observed in the newspapers of the colony, an answer of his Excellency Lord Aylmer, to an address of the Assembly, by which his Excellency assured the House he would transmit them; but his Excellency did not make me acquainted with the address, or his answer to it, till after a letter was written by me to his Excellency's Secretary, requesting to be informed, whether such proceedings had, or had not, come under his Excellency's notice.\*

In his Petition to the Assembly, Mr. Lampson, after a partial and untrue statement of facts, representing him to be an unoffending and much injured party, ascribes the prosecutions which he states to be pending on the criminal and civil side of the Court of King's Bench, being those above mentioned, "to the aggressions of the agents and servants of the Hudson's Bay Company," and then proceeds to advance specific causes of complaint against me, as Attorney General, which, being divested of injurious terms and gross misrepresentation, resolve themselves into the acts of official and professional duty performed by me, as above stated.

This Petition was referred by the House of Assembly to the Committee of Grievances; and, upon it is grounded the Third Report of that Committee, to which your Lordship's attention is now solicited. The Report was preceded by an investigation, in which Mr. Lampson, his counsel and attorney, were the only witnesses examined, to substantiate the alledged rights of Mr. Lampson, and justify the conduct of himself and of his servants, (these being subjects which were then under the cognizance of His Majesty's Courts of Justice,) and also to prove his alledged grounds of complaint against me. Two other witnesses, the Honourable Mr. Primrose and Captain Byfield, were, indeed, examined before the Committee, but as to immaterial points; the former, as to his professional engagements to the Hudson's Bay Company, and the instances in which I acted

\* Vide Appendix, No. 5.

professionally for that Company, and the latter as to the geographical situation and extent of the Bay of *Mille-Vaches*. Upon the information thus obtained, the Committee has taken a wide range in its Report, embracing all the subjects of litigation between the Hudson's Bay Company and Mr. Lampson, and their servants respectively, as well in criminal as civil Courts of Justice. As was to be expected from the sources of information exclusively referred to, the Committee has found no difficulty in deciding, summarily, in the most unqualified terms, in favour of Mr. Lampson, upon all these subjects. The criminal prosecutions against his servants, in one of which a conviction on confession has been obtained, and in others of which Indictments have been found by a Grand Jury, are held by the Committee, without any evidence whatever before it, to have been frivolous and vexatious, while those which Mr. Lampson instituted, and in which bills of indictment were ignored by the same constitutional authority, are, with like easy acquiescence in his statements, and equally without any evidence to enable the Committee to form any opinion on the subject, declared to have had the best foundation. With the same facility, the Committee has pronounced Mr. Lampson's alledged civil rights and claims to be, all of them, well founded, and seems to have perceived nothing reprehensible in his manner of enforcing them, by taking the law into his own hands; the forcible entry and detainer committed by him on the Seignior of *Mille-Vaches*, it would appear, has been held by the Committee to have been an innocent act; he is clearly also, according to the opinion of the Committee, entitled to all the land he has forcibly wrested from the proprietors of *Mille-Vaches*, and from the Hudson's Bay Company, and to all he has claimed; he has an equally just right, in their opinion, to the furs, which he demands in his action of detainee, still undetermined, the latter action, according to the judgment of the Committee, being well founded, while the action of "*Réintégrade*," against Mr. Lampson, has received their marked disapprobation. In a word, the Committee, having adopted the statements and legal opinions of Mr. Lampson, his counsel and attorney, as the foundation of its decisions, without further inquiry, and having virtually made Mr. Lampson a judge in his own cause, has decided on all the



subjects in dispute between him and his adverse parties, precisely as Mr. Lampson himself would have done, and, I may be permitted to add, in the same sweeping manner. Upon such an exercise of power by a Committee of the Assembly of Lower Canada, and the effect of it in overawing, obstructing, and influencing the administration of justice, it does not belong to me to offer any remark. In what respects myself, a corresponding facility has been displayed in finding me guilty, upon all the heads of complaint which Mr. Lampson, his counsel and attorney, have found it convenient to fasten on me; and this has been done, in terms not usually employed in parliamentary reports, but strikingly indicative of the spirit in which the proceedings of the Committee have been conducted. That I may with becoming brevity and distinctness, answer the animadversions or charges of the Committee, conveyed in these terms, I shall beg leave to class them under certain heads.

First,—I am charged, in the Report of the Committee, with official misconduct, in having, professionally, taken upon myself the defence of an action of detinue, brought by Mr. Lampson, whereof mention is above made, and which, it is said, was grounded “on the illegal and forcible aggressions” of the servants of the Hudson’s Bay Company.

The Attorney General of Lower Canada, for the time being, as well as the other law servants of His Majesty in that Province, has always been engaged in private practice, as an Advocate, to an extent corresponding with his professional character and industry.—In the adjoining Provinces, and in other parts of His Majesty’s Dominions, the same right of practising as a private Advocate is exercised by the Attorney General. This right is of course limited to cases in which His Majesty’s interests are not involved. Subject to this limitation, within which I have always acted, it was, I presume, perfectly competent to me, to institute or defend actions for individuals. In the action of detinue in question, His Majesty had, and could have no interest whatever. The defendants being in possession of certain furs, Mr. Lampson instituted this action, to recover them, as being his. The action, therefore, involved merely a question of private right between him and the defendants, from the determination of which, neither profit nor loss, benefit nor injury,

could accrue to the Crown. Mr. Lampson, it is to be observed, also, did not apply to me to institute the action, or consult me respecting it, but, as he had a right to do, made choice, for that purpose, of a professional gentleman, in whom, it is to be presumed, he reposed confidence; and with him he associated, as counsel, Mr. Vanfelson, who holds the office of Advocate General in the Province. I am, therefore, charged as being culpable, in a high degree, by the Committee of Grievances, for having withheld from Mr. Lampson professional services which he never solicited, and which, by the employment of other Advocates, he precluded me from affording. But it is also perfectly plain that the defendants had the same right to choose their Advocate, which Mr. Lampson had himself exercised, and that their choice might fall on me, as well as on any other individual, not retained by him. I have, therefore, incurred the animadversion of the Committee on this head, expressed in terms highly injurious to my character, without the slightest reason.

Secondly,—I am charged by the Committee of Grievances with official misconduct, in having instituted an action of "*Réintégrande*," for and in the name of the lessees of *Mille-Vaches*, against William Lampson, "to compel him to remove "from the banks of the River Portneuf;" and with being, by this professional act, guilty "of a direct and positive violation "of my duty to the Crown, the interests whereof," it is alleged, "have been culpably abandoned by me, either from an inordinate love of lucre, or from (what would be as bad) a strong "desire to render service to my clients, even to the prejudice "of the Crown, which," it is said, is "eminently interested in "the success of its lessee, in his disputes with his adversaries, "the partners and servants of the Hudson's Bay Company."

This is strong language, indeed: that it should have been adopted and applied to me, cannot but excite great surprise, when the alleged cause for it is explained. The action of "*Réintégrande*" referred to by the Committee, as having been instituted by me against Mr. Lampson, is the same action of "*Réintégrande*" whereof mention is above made. The action known in Lower Canada, under this French name, is the *Interdictum unde vi* of the Roman law. It is a possessory action, by which persons, forcibly dispossessed of lands or

houses, are enabled to obtain restitution of them, and recover damages for the injury thus sustained, on the ground of possession alone, without any reference whatever to title; the maxim applicable to this action being—“*spoliatus ante omnia restituendus est.*” In the English law no corresponding civil action is to be found. The violence complained of in such cases, by that law, is dealt with as a breach of the peace, as a crime; and an equally efficacious and more prompt remedy is afforded by indictment for a forcible entry and detainer, or by resort to the power of Justices of Peace, who are authorized, on complaint of the party aggrieved to go upon the spot and immediately reinstate him in possession. The action thus brought against Mr. Lampson was, therefore, grounded on an alleged illegal criminal act; in it the title to the land of which the Hudson's Bay Company had been forcibly disseised, could not be brought in question, nor could any ground of defence be derived to Mr. Lampson from a right of property in the Crown, if such right had existed; nor even from an absolute and unquestionable right of property in himself. The decision, therefore, to be given in this action, could not, in the smallest degree, affect the rights of the Crown, which, if they existed, could not have been pleaded or urged in it, and after a decision against Mr. Lampson, might have been enforced in the same manner, and to the same extent, as if no such decision had been given. It is plain, therefore, that the Crown had no interest whatever in the action in question; and that, in bringing it, I did not, as erroneously and injuriously alleged by the Committee, “culpably *abandon* its interests.” But it is alleged by the Committee, that the support of the Government was due to Mr. Lampson, as lessee of the Crown, “which,” it is said, “was eminently interested in the success of its lessee, in his disputes with his adversaries, the partners and servants of the Hudson's Bay Company.” It was certainly incumbent on the Government and its officers to protect Mr. Lampson, in all legal rights derived under his lease; but, as lessee of the Crown, he could have no claim to its protection or support, in any illegal act whatever; nor could the Crown, which owes and extends equal justice to all its subjects, be supposed, without unheard-of derogation from its character, to be “interested in

“ the success of its lessee in his disputes ” occasioned by any such act.—If Mr. Lampson forcibly wrested property from his neighbour, as being within his lease, it was *fit* that the laws should receive execution as to him, as they would, with respect to any other person ; and it is singular, indeed, that the Committee of Grievances should have thought special protection and support due to him in such a case. Under the circumstances complained of by the Hudson’s Bay Company, it might have been the duty of the Attorney General, if proper affidavits had been laid before him, to have indicted Mr. Lampson, and the twenty-five or thirty men in his service, by whom the dispossession of the Hudson’s Bay Company was effected *vi et armis*, for a riot and forcible entry and detainer ; and it is certainly rather unreasonable, that he should be held in a high degree culpable by the Committee of Grievances, for having adopted, professionally, the more lenient remedy of a civil action.—But it is palpably manifest, that inasmuch as the ground of the action of which the institution by me is complained of, was a criminal breach of the peace, and even an indictable offence of considerable magnitude, protection and support, in relation to it, were due from His Majesty’s Governor, his Courts of Justice, and Law Servants, within their respective spheres of duty, and in execution of the laws—not to Mr. Lampson, (though a lessee of the Crown,) to afford him impunity, for a criminal aggression on his neighbour—but to the parties complaining of injury from his unlawful violence, to enable them to obtain justice.—In the institution of this action, therefore, I have not acted inconsistently with my official duty, as erroneously and unjustly represented by the Committee of Grievances, but in perfect conformity with it ; and I may confidently conclude, that I have incurred this, as other of the animadversions of the Committee, without the slightest reason.

It has been immaterial to my justification, under this head of charge, I beg leave to state, to inquire whether the land claimed by Mr. Lampson, as being within his lease, belongs to the Crown, or to the Seigniors of *Mille-Vaches*. The Committee of Grievances has decided very positively, that it belongs to the Crown.—Without professing to have any formed opinion on this point, I would only observe, that the Committee, in

coming to this conclusion, has by no means been put in possession of the whole case, and has laboured under a disadvantage peculiarly unfavourable to the investigation of truth, in having heard only one of the parties concerned.—In their Petition to His Excellency Lord Aylmer, representing the institution of an action for the establishment of boundaries to be unnecessary, the Seigniors of *Mille-Vaches* brought under his Excellency's notice, a *Procès Verbal* of survey, dated in 1675, by which, as they alledge, the land in question was included within the limits of *Mille-Vaches*, as making part of that seigniory: they also produced an "*acte de souffrance*" of the Intendant of Canada, dated in 1675, referring to this survey as having determined the limits of that seigniory, and they likewise alledged a continued, uninterrupted possession in themselves and their ancestors, in conformity with the said *Procès Verbal* of survey, from the date of it down to the present time; that is, during one hundred and fifty years. These grounds of alledged right in the seigniors of *Mille-Vaches*, it would of course be most necessary to investigate, before adopting any opinion on the point which has been decided by the Committee.—I would also beg leave to observe, that the Committee appears to have attached an undue weight, to the condition of cultivation or settlement, in the original grant of *Mille-Vaches*. This condition is found in all grants of land, in Canada, both before and since the conquest; but it does not abridge the right of property conferred by the grant; and hitherto no measure has been taken for the revocation of such grants, on the ground of the non-fulfilment of the condition. Until such revocation shall have taken place, all rights incident to ownership, including the right of trading with Indians or other persons, may, therefore, be exercised within the limits of *Mille-Vaches*, as freely and absolutely, as in any other part of the province, and in the same plenitude, as in the city of Quebec itself.

Thirdly,—I am charged by the Committee of Grievances with having delayed "for a long time," the institution of the action for the establishment of boundaries between the King's Posts and the seigniory of *Mille-Vaches*, "from a desire to shield the parties in possession of the encroachments on the "King's Posts."

The direction of his Excellency Lord Aylmer, that an action for the establishment of boundaries between the King's Posts and *Mille-Vaches* should be instituted, was conveyed to me in letter from his Secretary, on the 29th December last, and the action was instituted on the 16th February following.—If the whole of this period of delay were referable to me, I venture to think, that it could not reasonably be called "a long time," nor afford cause for the censure of the Committee, nor for the imputation of the improper motive gratuitously ascribed to me. I do not perceive in the circumstances of the case, apart from the feelings and views of Mr. Lampson, any cause for the extreme haste, which the Committee seems to have deemed necessary. But, in reality, a very small part of this delay is ascribable to me; and however unimportant in itself the retrospect of the causes of the delay may be, I hope I may be allowed to state them, in order to my complete justification. To enable me to carry into execution the direction of His Excellency to institute an action, it was obviously necessary that I should be put in possession of, and I expected to receive the titles and documents relating to the subject to be brought into litigation. I remained, during part of the month of January, in expectation that His Excellency would cause them to be transmitted to me, or refer me to some public office where they were to be found. But not receiving any communication on this head, I resolved on addressing a letter to His Excellency's secretary, to request that the Inspector of the King's Domain and Clerk of the Land Roll might be directed to make me acquainted with any titles or documents that his office could furnish, relative to the boundaries between the King's Posts and *Mille-Vaches*. The transmission of this letter was delayed for some days, in consequence of the severe illness of His Excellency Lord Aylmer, in the latter part of January, so that it was not actually sent till the 31st January. No answer to this letter was received by me till the 12th February; though a renewed injunction to institute the action was conveyed to me in a letter from His Excellency's secretary on the 10th February, which must have been written without adverting to the circumstance of my letter, of the 31st January remaining unanswered. On the 12th February, I was put in possession, by the proper officer, of the titles and docu-

ments which I had applied for. Immediately after and without losing a moment, I set about preparing the information to ground the proposed action; and while thus engaged, I received a letter from His Excellency's Secretary, transmitting, by order of His Excellency, a Petition from the proprietors of *Mille-Vaches*, dated 5th February, complaining of the proposed institution of an action for the establishment of boundaries, as by being unnecessary and calculated to subject them to great expense and trouble; and this Petition was transmitted to me "for such observations as I might judge necessary, to guide His Excellency in any further proceeding in this business." I found it difficult to reconcile the two orders of His Excellency, one of which I required to institute an action, and by the other, according to my interpretation of it, to report whether the action ought to be instituted. In this dilemma, I addressed myself to His Excellency, to be informed—"whether it was His Excellency's intention, that I should persist in the immediate execution of his order of the 10th February; or whether I was to suspend the execution of that order, till after my report on the Petition of the Proprietors of *Mille-Vaches*, and till I might be honoured with the further directions of His Excellency on the subject." On the 15th February, I was relieved from my embarrassment by a letter from His Excellency's Secretary, informing me that—"with the view of preventing all misconceptions," His Excellency was pleased to desire—"that the suit '*en bornage*,' of the Seigniorship of *Mille-Vaches* might proceed, without loss of time," and adding that "with reference to the Petition of the Proprietors of *Mille-Vaches*, and the mode of defraying the expences connected therewith, His Excellency was of opinion, that it was a point for future consideration." This order of His Excellency, not having reached me till after office hours, on the 15th of February, I could not sue out process on that day; but the very next day this was done, and the action instituted. From this statements of facts, it is plain that I was not enabled to institute the action in question till the 12th February; that the institution of it was necessarily suspended between that day and the 15th, till I could learn which of the two apparently contradictory orders I was to execute; and what the action was insti-



tuted the day after this cause of embarrassment was removed, and at the first possible moment. So that I may assert that the action was instituted within two days after I was enabled, by His Excellency Lord Aylmer, to institute it. This period is called, by the Committee of Grievances "a delay for a long time," for which an improper motive is arbitrarily assigned by the Committee; and, in order to aggravate the singular offence thus imputed to me, it is alledged by the Committee, "that it required nothing less than the repeated and positive orders of the Governor-in-Chief to make me undertake the proceeding." Such a charge, grounded on such facts, need not be enlarged upon, and cannot, I presume, but be thought by your Lordship to be very extraordinary.

Fourthly,—I am charged by the Committee with having, in November last, given an erroneous opinion "respecting a Petition presented on behalf of the Hudson's Bay Company, praying to be authorized to sell and distribute liquors to the Indians, and soliciting pardons for those of their servants who had done so;" and in giving this opinion, it is alledged, that I was "instigated by a desire to be of service to my clients, whose interests were opposed to those of the lessee of the King's Posts, and by a necessary consequence, to those of the Crown itself."

This animadversion involves two imputations: 1st Error in giving an official opinion; 2d, A corrupt motive for having given the opinion. Both these imputations are destitute of any foundation; and the latter, as in other instances, has been *gratuitously applied to my conduct*. Without admitting, as seems to be implied in this animadversion of the Committee, that error in the opinions of an Advocate, or Law Officer of the Crown, constitutes an offence, I am most willing, on this occasion, that it should be so considered, and to rest my justification on the validity and correctness of the opinion, which has subjected me to the censure of the Committee. The opinion referred to is that contained in my Report above-mentioned, to His Excellency Lord Aylmer, on the Petition of the Hudson's Bay Company, for a licence to sell and distribute liquors to Indians, and a pardon for past offences, supposed to have been incurred for the want of such a licence. This opinion

was given by me on a question of public law, not affecting merely the interests of the individuals concerned in it, but those of the province at large, and was formed under the most perfect conviction of its being legal and correct; which conviction I still retain. The difference between the Committee and myself, on this point, fortunately does not depend on facts, as to which the parties might be at variance, but on the construction of a provincial law, as it appears to me, of the plainest and most unequivocal import, and respecting which an opinion may as easily be formed in London as in Quebec. Without trespassing, therefore, on your Lordship's patience, by offering reasons in support of my construction of the law, I will merely beg leave to solicit your Lordship's attention to the two ordinances to which my opinion refers, which will be found under No. 15 (10) and No. 15 (11) in the annexed Appendix, and also to my Report to His Excellency Lord Aylmer, of the 29th January last, which will be found under No. 15 (7) in the same Appendix; in which Report are contained the grounds of the opinion that I am held culpable for having given. The opinion charged on me as an offence, so far from being censurable, is, I apprehend, entitled to the approbation of His Majesty's government, not only as being legally correct, but as having been calculated when given, to arrest and prevent much mischief, injustice, and disorder in the Colony. A short explanation will suffice to establish the latter opinion. By the provision of the ordinance, which the Committee holds to be in force, and which, I am of opinion, has been repealed, the sale and distribution of spirituous liquors to Indians is prohibited—"without a special licence for that purpose first had and obtained from the Governor, Lieutenant-Governor, or Commander-in-Chief of the Province, or from His Majesty's Agents or Superintendents for Indian Affairs, or from His Majesty's Commandants of the different forts in this Province or from such other person or persons as the Governor, &c. shall authorise for that purpose." This provision of the ordinance, which was applicable to a state and condition of the colony, which have long ceased to exist, vests in the Governor, and the subordinate officers which it specifies, a power, involving in it a monopoly of the Indian trade, throughout

the Province. At the time at which my opinion was given, on the Petition of the Hudson's Bay Company, traders in different parts of the Province carried on their trade with the Indians and sold and distributed spirituous liquors to them (as had been done for forty years before) without any licence whatever. All these traders, with their numerous clerks and servants, were equally, with the servants of the Hudson's Bay Company, obnoxious to *qui tam* actions, such as those brought by Linton at the instigation of Lampson. If the opinion of the Committee and not mine were correct, and had been acted upon, these different traders, or persons desirous of supplanting them in their trade, from rivalry, conflicting interests, personal resentments, or other such motives, following the example of Mr. Lampson, could not have failed to harass and annoy each other by vexatious *qui tam* actions, similar to those now referred to. Mr. Lampson, not having a licence to sell and distribute spirituous liquors to Indians, as required by the ordinance, must himself, as well as his servants, have been liable to such actions; and it is not to be supposed, that the servants of the Hudson's Bay Company, smarting under the actions of Linton, and with the ruin of their trade in prospect, would have omitted to retaliate on him the same means of annoyance and vexation, which he had directed against the trade of that company. Hence actions of this vexatious description must have been multiplied without number; and all parties must at last, to avoid a common ruin, have resorted to the Governor for that protection and support in their trade, which were solicited by the Hudson's Bay Company, from his Excellency Lord Aylmer. It cannot be imagined, that his Excellency, in the discreet exercise of his authority, could have granted licences to some persons, and have refused them to others. If he refused them, the subordinate officers above mentioned might have been referred to for licences, as having the same power, as the Governor, to grant them. In this state of things, one or other of two consequences must have occurred. Either licences would have been granted, indiscriminately, to all applicants for them, or they would have been confined to a few favoured individuals, with Mr. Lampson at their head. In the former case, the provision of the Ordinance would have been virtually, and to all practical

purposes, nullified, and Mr. Lampson, and other Indian traders, seeking an exclusive right of trading with the Indians, could have acquired no advantage, from a partial exercise of the Governor's power. In the latter, the Governor's monopoly of the Indian trade would have been so invidious in its exercise, so inconsistent with public policy, and so injurious to the general interests of the Province, that an immediate repeal of the Ordinance in question must have been solicited from the Provincial Legislature, and if refused by it, must have been sought, and would, it is to be presumed, have been obtained, from the Imperial Parliament. Now, it is for having, by a correct discharge of my official duty, in giving the opinion complained of, arrested *in limine* the train of injurious consequences which I have described, and which must have resulted from the success of Mr. Lampson's pretensions, which have been since supported by the Committee of Grievances; and it would appear, also, by the House of Assembly itself, that I have become obnoxious to the animadversion at present under consideration. Entertaining the fullest persuasion that the opinion complained of is legal and correct, and was calculated to be eminently useful when given, and conscious that it was dictated by no other consideration than a sense of duty, I confidently submit myself to your Lordship's judgment, on this animadversion of the Committee of Grievances of the Assembly of Lower Canada.

Fifthly,—I am charged by the Committee of Grievances, with “having, in suits wherein a partner and two of the agents  
“ of the Hudson's Bay Company were sentenced to fines and to  
“ twenty-four hours imprisonment, for having repeatedly sold  
“ strong liquors to the Indians, and made them drunk, constituted myself as their advocate, and exerted myself to procure  
“ them to be exempted from the payment of the fines imposed;  
“ although I well knew that a moiety of those fines would fall  
“ to the profit of the Government, and be paid into its chest.”

The suits referred to in this animadversion are the *qui tam* actions of Linton; though there is some inaccuracy and amplification in the description of them. My answer to this animadversion is very brief. Upon the return of the Writs of Habeas Corpus sued out by the defendants as above stated, I appeared as counsel for them, and insisted on their right to be discharged.

This exercise of professional duty, on my part, in favour of the liberty of the subject, I apprehend to have been perfectly unexceptionable. I did not, as erroneously alleged by the Committee, constitute myself the advocate of the defendants, nor exert myself to procure them to be exempted from the payment of the fines imposed on them. When the Writs of Certiorari, which had been sued out by the attorney of the defendants, were returned, he appeared for them in Court. Afterwards, on motions which were made to quash the convictions, and when a hearing was about to be had upon them, I intimated to the court my intention, in the course of the hearing, to state the grounds of the opinion I entertained, as Attorney General, with respect to the convictions; but the hearing being postponed to another term, I had no opportunity of fulfilling this intention; and nothing else was done by me in relation to this matter. Considering the question involved in the convictions to be of great importance to the Government, and to the Province at large, I felt it to be my duty, as Attorney General, not to be silent while the discussion took place; and, if an opportunity had been afforded, I should have availed myself of it to state to the court the grounds on which I held the convictions to have been illegal. In the latter part of the animadversion of the Committee, an opinion seems to be implied, that it was the imperative duty of the Attorney General, on a public question, affecting the interests of the Government and of the people, to maintain that to be law, which he held and knew not to be law, because, by making it law, the Government would have a share of fines, to the amount of seven pounds ten shillings! I am free to declare, that this pecuniary consideration did not affect my sense of duty; which, on this point, was entirely at variance with the opinion of the Committee.

Sixthly—I am charged with having, in my argument on the Writs of Habeas Corpus, “made use of expressions which were “indecorous and even offensive towards the Magistrates who “had pronounced the sentences.”

This charge I must deny to be true. I used no expressions that were indecorous, or personally offensive to the Magistrates. The convictions under their authority, I maintained, as I still consider them, to be illegal; and I represented in

strong terms, such as the case seemed to require, the vexations and oppressive character of the whole proceeding. In this I merely exercised, and I think discharged, the duty of an advocate.

Seventhly—I am charged with having—"when in contempt of the King's peace, and without any sufficient cause, the servants of the lessee of the King's Posts were 'torn' from their residence at their Posts, and 'dragged' to Quebec as prisoners, brought bills of indictment against them which were frivolous, and not justifiable by the circumstances attending them; while, by a still more culpable neglect of duty, and of the impartiality which ought at all times to be my guide, I favoured my clients, and granted to them impunity."

The Committee of Grievances in this, as in other of its animadversions, has fallen into great error as to matter of fact, being deceived, it is to be presumed, by the false statements of interested individuals; but in none of them has it been betrayed into errors more inconsistent with truth than in this. The servants of the lessee of the King's Posts were not "torn," or "dragged," or otherwise removed from their residence, as prisoners, though some of them, without a "contempt of the King's peace," and for very "sufficient cause," might have been subject to the inconvenience of arrest, if they had not eluded the search of a peace officer. The members of the Committee cannot have been aware of the resistance to the execution of Mr. Christie's warrant above mentioned; if they had, it is impossible they could have expressed themselves in the language of this animadversion. In reality, Mr. Lampson's servants, after setting at defiance the public authority of the province, as above stated, escaped arrest altogether. They afterwards, and at their own convenience, found their way to Quebec, about the time at which the Criminal Court was opened, and there entered into recognizances, without having, I believe, been subject to any arrest or imprisonment whatever. With the measures adopted for enforcing the magistrate's warrant against M'Leod and his associates, I had nothing to do, except in having given the opinion required from me by his Excellency Sir James Kempt as above mentioned. But, it is very certain that the vigorous exercise of authority, suggested in that opinion, in execution of the laws,

was urgently necessary; and I can entertain no doubt that serious outrages, and probably bloodshed, were prevented by it.—The indictments, which it was my duty to prefer against these individuals, are stated by the Committee, to have been "*frivolous and not justifiable*." This decision, as in other instances, has been pronounced by the Committee, without any evidence whatever before it, as to the nature or grounds of these indictments. The Committee was, therefore, absolutely without any means of forming any opinion on the subject; and the weight due to decisions thus given cannot be dubious. But to disprove this allegation of the Committee, it is sufficient for me to refer to the bills of indictment laid before the Grand Jury of the district, and to those found by them, whereof mention is above made, by which it is ascertained that the offences charged against Mr. Lampson's servants, in these indictments, on grounds found by the Grand Jury to be "justifiable," far from being "frivolous," were of a serious and grave character, without the repression of which neither the security of person or property nor the peace and good order of society could be maintained. To ground a charge of partiality on my part, in favour, as it is said, of my clients, a falsehood has been imposed on the Committee, the particulars of which it is necessary to explain. It is said—"that the attorneys of Mr. Lampson, who were employed by the lessee of the King's Posts, to maintain his rights, with respect to the charges brought against a number of the servants or agents of the Hudson's Bay Company, for having robbed the Indians of the interior, and having fired with guns and pieces of artillery upon the servants and clerks of William Lampson, being desirous of ascertaining whether the said Attorney General intended to proceed against them, in the criminal term of September last, wrote officially to him, in order that in case he had determined to proceed, they might send for the witnesses required from the Indian country. That gentleman, however, not having thought fit to give them any answer, they, as they ought to do, considered his silence to indicate his intention of not proceeding in those suits; but how much were they not surprised, when they found that the said Attorney General, as soon as he knew that there were no witnesses, came forward with Bills of Indictment, which



“ he submitted to the Grand Jury, who threw them out, as was  
“ naturally to be expected. To the remonstrances which the  
“ Attornies of the lessees of the King's Posts made to him on  
“ this subject, who maintained that they were not bound to send  
“ for witnesses from such a distance, without being sure of the  
“ cases being brought on, he answered, ‘ It is not my fault—  
“ ‘ I have done my duty—here are the Bills.’ ” This statement  
is entirely untrue, and without any the slightest foundation :  
the proof of its being inconsistent and at variance with truth in  
every particular is easily established. The servants of Mr.  
Lampeon were complainants or private prosecutors on some  
charges, and on others they were parties accused. In the former  
capacity, they were bound to be prepared with their evidence,  
to sustain the indictments to be preferred on their charges : if  
not, the accused, whether in jail or under bail, were entitled to  
be discharged. The practice in conformity with this principle  
has always been, to prepare and lay before the Grand Jury, at  
the opening of the Court, the indictments on the charges of the  
private prosecutors, when sustained by sufficient depositions.  
Mr. Lampeon and his Attornies were, therefore, perfectly  
aware of the obligation under which he was, to be ready with  
evidence to support the indictments to be preferred, at the in-  
stance of his servants. No communication from the Attorney  
General on this head was necessary, or could be expected, nor  
was any solicited *by notary* or otherwise ; and it is absolutely  
and entirely untrue, that the Attornies of Mr. Lampeon, as above  
stated, “ *wrote to me officially* ” for information whether I meant  
to proceed or not on the charges of Mr. Lampeon's servants, as  
complainants or private prosecutors. A letter was, indeed,  
written to me while I was at Montreal, by Mr. Guky, one of  
Mr. Lampeon's counsel, *but for a totally different purpose* ;  
and it is peculiarly fortunate for me, that having preserved this  
letter, I am enabled, by the production of it, to falsify most  
conclusively this unfounded imputation on my character and  
honour. The letter of Mr. Guky will be found in the an-  
nexed Appendix : it relates *exclusively* to the charges made  
not *by* but *against* “ the agents and servants of the King's  
“ Posts,” for “ certain trespasses upon the persons and property  
“ of the agents of the Hudson's Bay Company,” and as to those

# APPENDIX.

Mr. Gagy desires to know, "whether it was my intention to "try them at the next ensuing term." The object, therefore, of this letter was not, as untruly stated in the Report of the Committee, to learn whether the charges brought against the servants of the Hudson's Bay Company would be proceeded upon, Mr. Gagy requiring no information on this point, and being perfectly aware that these charges must be proceeded upon by indictment, or be abandoned; but to learn whether I would consent to try the indictments, which it was expected would be found, against the servants of Mr. Lampson, in the then next term: it being implied by Mr. Gagy's letter that, in that case, the defendants would waive their right to *traverse*. This letter from Mr. Gagy I did not answer, and my reasons were these: The private prosecutor, to be consulted on the charges against Mr. Lampson's servants, was the agent of the Hudson's Bay Company, who resides at Quebec. I had left that place, to attend the Criminal Court at Montreal, about ten days before the receipt of the letter of Mr. Gagy, who was perfectly aware of the time of my departure, and might most readily have obtained the desired information from me, while on the same spot with the private prosecutor and himself. If he had communicated with me personally, or in writing, while I was still at Quebec, I should immediately have sent for the private prosecutor, and have ascertained whether he would be ready for trial in the course of the term, or not, and have informed Mr. Gagy accordingly: but, being at the distance of two hundred miles from the private prosecutor, I could hold no such communication with him, and therefore could give no answer to Mr. Gagy, in the affirmative or negative, on the subject of his letter. I was indeed equally ignorant, whether the witnesses of the one or the other of the parties concerned in these prosecutions would or would not be forthcoming, having no other information whatever, than what was furnished by the written depositions in my hands. Under the circumstances to which I have adverted, I thought my inability to give the desired information might be sufficiently inferred from facts within the knowledge of Mr. Gagy, and from my silence, and did not, therefore, answer Mr. Gagy's letter. Subsequently, at the opening of the Criminal Court at Quebec, Mr. Gagy inquired of me, whether I had

received his letter. I told him I had, and had not answered it, for reasons of which he must be sufficiently aware; and nothing further was said respecting the letter. No injury was, or could be, sustained by Mr. Lampson, from the circumstance of no answer having been given to this letter, as his servants were not ready to take their trial, and insisted on their right to traverse, which was permitted by the Court. Having, as my duty required, prepared indictments on the depositions in my hands, against the servants of the Hudson's Bay Company, as well as against those of Mr. Lampson, I laid both before the Grand Jury. When in the act of preferring the former, it is perfectly true, that Mr. Lampson's counsel remarked, that some of his witnesses were not in attendance; and it is also true, that I answered, that it was not my fault, and that I had prepared indictments, as it was my duty to do; referring, by these words, to the practice above explained, which made it incumbent on me to prepare indictments on the depositions which had been put into my hands. If I had not laid indictments before the Grand Jury, at the instance of Mr. Lampson's servants, the omission to do so would, no doubt, have been urged as evidence of partiality. Having discharged my duty in this respect, I have, nevertheless, not escaped that imputation; and, indeed, from this as well as other parts of the proceedings of the Committee, it must be sufficiently evident, that no purity of intention, no correctness of conduct, could shield me against accusation. On the grounds which I have now stated, I am justified, I apprehend, in concluding that the seventh animadversion, contained in the Report of the Committee, is entirely without foundation.

Eighthly and lastly—I am charged by the Committee of Grievances with culpable conduct in having “with the view of  
“prejudicing the Judges of the Court of King's Bench, against  
“Mr. Lampson, plaintiff in the action ‘*en revendication*’ above  
“mentioned, caused him, by my advice and direction, to be  
“arrested for perjury, and *that* upon the sole accusation of the  
“same individuals who had forcibly carried off his peltries;  
“and who, it is said solely escaped from being overtaken by  
“public vengeance, because their protector, the Attorney  
“General, had recourse to expedients, which were repugnant  
“to honour, to duty, to the due administration of justice.”

Divested of a colouring which does not belong to them, but which is found throughout the report, the facts referred to in this charge are of ordinary occurrence, involving no cause for imputation of any kind, and affording not the slightest reason for the injurious terms of which a prodigal use, I may be permitted to state, has been made by the Committee. These facts are few and simple. In the institution of an action of detainee, Mr. Lampson resorted to an extraordinary remedy, that of attachment before judgment, which is not permitted in Lower Canada, except on affidavit, that the goods demanded in such an action belong to and are the property of the plaintiff. Every man, who makes such an affidavit, becomes responsible for its truth, and is liable to a prosecution for perjury, if he be guilty of wilful falsehood in making it. The defendants in the action, it would appear, deemed themselves warranted in charging Mr. Lampson with perjury, in having made this affidavit, and proceeded against him accordingly, with the assistance of a professional gentleman employed for that purpose. Their affidavits before a magistrate, drawn by that professional gentleman, it would appear, were held sufficient to hold Mr. Lampson to bail on a charge of perjury, which is still pending against him, and it is this proceeding that, without any evidence whatever, is ascribed to me, and that is called an "expedient" "which is repugnant to honour, to duty, and to the due administration of justice." Such terms were certainly never before applied to the exercise of a strictly legal remedy, already under the cognizance of a Court of Justice, and in the course of judicial investigation. If the charge adverted to had been improperly made, it was obviously, by the rejection of a bill of indictment by a Grand Jury, or by a verdict of acquittal by a Petty Jury, that the party was to be exonerated from it; and his ulterior recourse for damages for a malicious prosecution is well known. The whole course of justice, by this proceeding of the Committee, is virtually obstructed, and the arbitrary determination of a Committee of the Assembly, upon the mere statements of the party accused, substituted for the decisions of grand and petty juries. In thus absolving Mr. Lampson from the charge of perjury, the Committee also seems to convey by implication a similar charge, proceeding from itself, against

the private prosecutors, for if he was guiltless, they could not be innocent, in swearing that he committed that offence. But, whatever may be the merits or demerits of the parties respectively, in the transactions referred to by the Committee, on which it was competent to His Majesty's courts of justice alone to determine, and respecting which the Committee had no means of forming any opinion; it is most strange that I should be held criminal or culpable, for a remedy not adopted by me, but by other persons, over which I could exercise no control, and for which I am in no respect responsible. I can, therefore, only express surprise, that I should have been implicated, by the Committee of Grievances, in such a charge, conveyed in such terms.

I have thus, not without trespassing largely but unavoidably on your Lordship's attention, extracted from the Third Report of the Committee of Grievances of Lower Canada, all the animadversions and imputations to be found in that document, to my prejudice, and to each successively have submitted a specific answer. I must now beg leave to advert to the resolutions subjoined to the Report, of which a brief notice will suffice, as they necessarily depend for support on the Report itself, which has been refuted in all its parts.

The first and second of these resolutions are intended to establish a proposition of unquestionable truth, namely, that the Attorney General, in his private practice, ought not to place himself in opposition to the interests of the crown and of the public.

By the third resolution, it is declared that the Attorney General, by reason of his salary and fees, "has no need of practising as an Attorney in the Courts, in behalf of individuals." The salary and fees of the Attorney General, I beg leave to state, are now the same which they have been for thirty years past, and indeed for a much longer period; and, in the persons of my predecessors, they were not found to be too large, or incompatible with private practice. The annual amount of fees, received by my immediate predecessor, was more considerable than that which I have received; although professional assistance was afforded to him, at the public expense; whereas the duties of the office have been discharged

by me without any assistance whatever. The labour performed by me officially, it is to be observed also, would be compensated by a larger amount of income, if performed for private individuals. There are not, therefore, any considerations, that I am aware of, that would require, that the office should now be put on a different footing from that on which it has always subsisted in the colony, and which corresponds with the established rights of the office of Attorney General, throughout His Majesty's dominions. This resolution seems to have been grounded exclusively on the statements and opinions of the counsel and attorney of Mr. Lampson, which could not have derived any particular recommendation from their disinterestedness or accuracy.

By the fourth and fifth resolutions, it is declared that I became counsel, in certain matters, for the Hudson's Bay Company, their agents and servants; and that I thereby placed myself in opposition to the interests of the lessees of the crown, and by a necessary consequence, in opposition also to the interests of the crown itself. I have already shown, most conclusively, that the Committee of Grievances was led into error upon this head, and that I never placed myself in opposition to the interests of the crown. In this resolution, two very different interests have obviously been confounded as being the same. In stating that, by placing myself in opposition to Mr. Lampson's interests, I placed myself, "by a necessary consequence," in opposition to those of the Crown, a *non sequitur* has evidently been adopted, as being a "necessary consequence;" and it is plain that, on this fallacy, suggested by Mr. Lampson, the whole Report of the Committee, and the resolutions appended to it, have been constructed.

By the sixth resolution it is stated—"That my conduct on the occasion of the disputes pending between the Hudson's Bay Company and the lessees of the Crown for the King's Posts, has been exceedingly unjust, vexatious, and equally injurious to the rights and interests of the Crown, and those of its lessee, in the enjoyment of the Posts known by the name of the King's Posts." By the word "disputes" are to be understood, no doubt, the criminal and civil remedies, of which an account has been given. In the former, my conduct

consisted in acts of official duty, by which the laws, in a strictly legal course, were enforced against persons charged with crimes; in the latter, in which the rights and interests of the Crown were not in the smallest degree involved, my conduct consisted in lending my professional assistance, in the administration of justice between private individuals. In neither, therefore, have I been guilty of the misconduct imputed to me by this resolution.

By the seventh resolution, His Majesty's Government, for the misconduct imputed to me by the sixth, is solicited to dismiss me from the office of Attorney General. This resolution, being predicated on the preceding resolution, and on the statements contained in the report of the Committee of Grievances, both of which have been shown to be wholly groundless, is deprived of the foundation on which it was adopted, and amounts therefore to a prayer of punishment where there has been no offence.

It only remains, that I should briefly notice some misrepresentations of my conduct, contained in detached statements of individuals, unconnected with any subject before the Committee, which are too trivial to be adverted to, if not found incorporated in the evidence transmitted, through the Governor of the Colony, for the consideration of His Majesty's Government. Of this description is a statement to be found, among other falsehoods, in the evidence of one Pierre Deligalle, a bailiff, in the second Report of the Committee of Grievances, by which he represented to the Committee, that I had not paid him for arresting three of the persons who were apprehended on charges of perjury at Sorel, and had assigned as a reason for my refusal, that he had not supported me at the election. It has so happened that this man's receipt, together with that of one Triganne, for similar services, has been preserved among other papers relating to disbursements at the Sorel election; and I beg leave to refer to both these receipts in the annexed Appendix,\* by which the falsehood of this man's assertion on this head, and the payment of such charges by me is established. He also states, that he was not paid for apprehending some individuals, under warrants of

\* See Appendix, Nos. 4 and 5.



Justices of the Peace, and conveying them to jail; and this is ascribed to a vindictive exercise of my influence to his prejudice. The charges to which he refers, according to the rules which govern such matters in Lower Canada, were payable by the private prosecutors, at whose instance his services were performed; and it was on this ground, that I could not certify his accounts against the Government for these services. Another very trivial matter, entirely of a personal nature, has been magnified into sufficient importance to find a place in the proceedings of the Committee of Grievances; being merely an expostulation on my part with the agent for the Seigniorship of Sorel, for not affording me his services at the election there, by giving me the requisite information, as to the qualification of the voters, of which being a stranger at the place, I was wholly ignorant; and it is alledged that, in the course of this expostulation, it was stated by me, that I would report his conduct to the Governor. This fact, as in other instances, is misrepresented, and is complained of as the exercise of a culpable official influence on my part.

Having thus submitted to your Lordship a justification of my conduct, in all the particulars in which it has been inculpated, I have to apologize for the length of the statements, and the minuteness of the details into which I have been compelled to enter. This however will not, I apprehend, be thought chargeable on me, but to be a necessary consequence of the form in which the accusations against me have been made. If reports of Committees, in the composition of which much latitude has been and will be taken, are substituted *in globo* for specific charges, proceeding from and sanctioned by the Assembly itself, the defence will unavoidably partake of the character of the accusation in its diffusiveness and prolixity; and the uncertainty of the imputed offences, to be collected from voluminous documents, must be productive of embarrassment to the accused, as well as to the high authority under whose cognizance they are brought. How far this mode of proceeding against public colonial officers may or may not be just, fit, or expedient, it does not belong to me to inquire, but may be deserving of the consideration of His Majesty's Government. In what respects myself, individually, the injustice of such a

proceeding, in its practical application, has been consummated, as is sufficiently exemplified in the situation in which I have been placed on this occasion; and I am therefore without personal interest in adverting to it, as being, on many grounds, in a high degree objectionable, and of pernicious and dangerous tendency. Waving all objections as to form, it has been my anxious desire, in this particular instance, to meet the charges of the Assembly, or of individuals, in whatever form and through whatever channels they may be conveyed; and I have thought it incumbent on me, to render my answers to the animadversions, which are the subject to this letter, the more minute and satisfactory, as the agent of the Assembly of Lower Canada has specially called the attention of your Lordship\* to the first and third Reports of the Committee of Grievances, as containing "*les plaintes de l'Assemblée.*" Conscious of purity of intention and rectitude of conduct, in all the particulars which have been made the alledged causes of unfounded animadversion and imputation, I submit myself to the justice of his Majesty's Government.

I have the honour to be, with the greatest respect,

My Lord,

Your Lordship's most obedient humble servant,

J. STUART.

\* Vide Appendix, Nos. 6 and 7.

FROM THE

## APPENDIX

TO A

LETTER TO THE RT. HON. LORD VISCOUNT GODERICH.

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No. 1, p. 153.

*Report of JAMES STUART, Esquire, His Majesty's Attorney General for Lower Canada, to His Excellency Sir JAMES KEMPT, in a Letter to His Excellency's Secretary.*

Quebec, 5th Aug. 1830.

SIR,

I have been honoured with the commands of His Excellency Sir James Kempt, signified in your letter of this day, transmitting a letter, with its enclosures, from the agent of the Hudson's Bay Company, requesting the interference of His Majesty's Government to procure the arrest of certain persons charged with obstructing the execution of a warrant on Mr. Peter M'Leod on a charge of felony, at the post of Islet Jeremie, on the 20th ultimo; upon which His Excellency has been pleased to require me to report my opinion, whether the conduct of the persons in question, as shown by the affidavits, amounted to such an actual resistance to the authority which the constable possessed for the apprehension of Mr. M'Leod, as to require that warrants should be issued against them.

In obedience to His Excellency's commands I have perused the papers which His Excellency has been pleased to refer to me, and among these the affidavits of Charles Prévost, Joseph Barras, and John Schilling. From these it appears that Charles Prévost was specially charged with the execution of a warrant,

under the hand and seal of a justice of the peace, for the arrest of one Peter M'Leod, on a charge of felony ;—that, with his assistants, he proceeded to a trading post, called Islet à Jérémie for the purpose of executing his warrant ; that he there found M'Leod with a drawn sword in his hand, at the head of a hundred men, or more, consisting of Indians and white men, supplied with arms, and, it is sufficiently evident, assembled for the purpose of preventing the execution of the warrant with which Prévost was charged ;—that M'Leod and the persons with him were made acquainted with the authority under which Prévost acted, and the purpose for which he came ;—that, in defiance of this authority, M'Leod, at the head of his party, forbade the officer, at the peril of his life, to advance towards him for the purpose of arresting him, declaring “ *qu'il se laisseroit couper en morceaux plutôt que d'être pris ; que lui et ses assistants étoient armés de fusils, de haches, et de bâtons, et prêts à se défendre ;* ”—that immediately after, Peter M'Leod, the younger, son of the person accused, forcibly took possession of the canoe in which Prévost, the constable, had reached the shore ; thus preventing him from returning, except on the terms which they might prescribe ;—that, by these means, the constable was prevented from executing the warrant against M'Leod, and was compelled to return to Quebec.

I cannot but express my extreme surprise, that Mr. Christie, the police magistrate, on such facts, substantiated by affidavit, should have refused, or even hesitated an instant, to issue his warrant for the arrest of the two M'Leods and the principal ringleaders in this outrageous and presumptuous resistance of public authority, which must constitute a grave offence under every system of law, by which the rights and security of individuals are protected. Under the law of this province it is a well settled principle, that the obstruction of lawful process is an indictable offence ; and stronger circumstances than in this case to aggravate such an offence have seldom occurred. A hundred men assembled with arms, for the avowed purpose of preventing the execution of a legal warrant on an accusation of felony, and actually accomplishing this purpose by intimidation and violence, is such a defiance and contempt of public authority, such an alarming obstruction of public justice, as can but rarely occur

under any established, well-administered government. When such an outrageous offence is committed, it is most important, in all cases, for the security of men's lives and property, that it should be visited with exemplary punishment. But, in this particular case, there are peculiar considerations, arising from the remoteness of the country in which the offence was committed, the absence of all local authority, and the consequent facility of infringing and evading the laws with impunity, which enhance the serious character of the offence, and render it urgent that effectual steps should be taken to render amenable to justice the persons who have been guilty of it, and inspire, in the remote parts of the provinces, where these transactions have occurred, a proper respect for the laws and for public authority.

I will only beg leave further to add, that by the affidavits taken before Mr. Christie, and above referred to, the persons therein named stand legally charged with the offence of a riot, and obstructing, by force and violence, the execution of the warrant of a Justice of the Peace in a case of felony; and, on this charge, it was the duty of Mr. Christie to have issued, and it is now the duty of any other magistrate, to whom the same affidavits may be submitted, to issue a warrant for the arrest of the said persons.

It is fit to observe, that, by opposing the execution of the warrant of the Justice of the Peace, these same persons may have become *participes criminis* with M'Leod, the elder, and have incurred the guilt of accessaries after the fact.

I have the honour to be Sir,

Your most obedient, humble servant,

(Signed) J. STUART,  
*Attorney General.*

True Copy, J. STUART.

No. 2, p. 157.

*Letter from J. STUART, Esq. Attorney General, to Lieut.-Col.  
GLEGG, Secretary, &c.*

*Quebec, 25th Nov. 1830.*

SIR,

I have been honoured with the commands of His Excellency Lord Aylmer, transmitting a copy of a Petition from the Hudson's Bay Company, in which they pray that a Licence may be granted to them, their agents and servants, to distribute spirituous liquors to Indians, within the Seigniory of "Mille-Vaches," and at all other posts and places occupied by the said Company, for the purpose of trade, within this Province; and requiring me to state, for his Excellency's information, whether he is empowered by the laws now in force, to grant the licence prayed for, and whether it is expedient that the said prayer should be granted.

In obedience to His Excellency's commands, I have perused the Petition which His Excellency has been pleased to refer to me and have the honour to state, that this Petition has evidently been preferred in consequence of the opinion entertained by the agent of the Hudson's Bay Company, that the provisions of the Provincial Ordinance, 17 Geo. III. c. 7, prohibiting the sale of strong liquors to Indians, without licence, are still in force, and applicable to that Company. But this opinion is erroneous. The provisions referred to, by a subsequent Provisional Ordinance, (31 Geo. III. c. 1,) have been repealed, as to all traders, except those at a fixed residence, in a settled part of the province, who are required to have a licence for keeping a house of public entertainment. They are, therefore, inapplicable to the dealings of the Hudson's Bay Company, in their Seigniory of "Mille-Vaches," and neither the pardon nor the licence applied for, is necessary.

I have the honour to be, Sir,

Your most obedient, humble servant,

(Signed) J. STUART,  
*Attorney General.*

True Copy, J. STUART.

No. 3, p. 159.

*Letter from JAMES STUART, Esq. His Majesty's Attorney General, to Lieut.-Col. GLEGG, Secretary, &c.*

Quebec, 29th January, 1830.

SIR,

I have been honoured with the commands of His Excellency the Administrator of the Government, signified in your letter of the 19th inst. transmitting two applications from Messrs. Neilson, Duchesnay, and Wilson, soliciting the professional assistance of the Advocate General, in certain suits or actions tried before them, the decisions in which are about to be removed into the Court of King's Bench, by *certiorari*; upon which His Excellency has been pleased to require my opinion as to the course it would be advisable to adopt, in regard to these applications for the assistance of the Advocate General, instead of mine, on the ground of my having already delivered an opinion in opposition to the decisions given by the applicants in the cases in question.

In order that His Excellency may be made acquainted with the nature of the applications referred to in your letter, and the considerations on which they rest, it seems necessary to explain some particulars, for the information of His Excellency.

By the Provincial Ordinance 17 Geo. III. c. 7. four distinct legislative provisions were enacted restrictive of trade and intercourse with the Indians. By the first a special licence in writing was required from the Governor, or from His Majesty's agents or superintendants for Indian affairs, or from the commandants of the different forts, or from such persons as the Governor might empower to grant it, to authorize the sale of spirituous liquors to Indians; and the sale of liquors to them without a licence, was prohibited under a penalty, for the first offence, of 5*l.* imprisonment for a period not exceeding a month, and the forfeiture of his licence to keep a tavern, if the liquors should be sold by an innkeeper: for a second and subsequent



offence the penalty and imprisonment were doubled. By the second of the said enactments, the purchase of clothes or arms from Indians was prohibited, under like penalties. By the third, all person were prohibited from settling in any Indian village, or in any Indian country within the Province, without a licence from the Governor, under a penalty of 10*l.* for the first, and 20*l.* for every subsequent offence. By the fourth, all persons were prohibited from carrying goods, for the purpose of trade, beyond certain limits on the Rivers Ottawa and Iroquois, or into any other parts of the Province, upon lands not granted by His Majesty, without a pass or permit from the Governor, under a penalty of 50*l.*

These regulations requiring licences, which established a monopoly of the Indian trade in the hands of the Colonial Government, and even of its subordinate officers, to be exercised only subject to its pleasure, were derived from the policy by which the Indian trade had been regulated under the French Government, previous to the conquest, and might, perhaps, be justified by the then state of the country, and of the neighbouring Provinces, which were at that time in open rebellion, by the expediency of preventing foreign influence and treasonable practices among the Indian tribes, and by considerations of public policy, which some years after ceased to exist. In the altered circumstances of the country, in 1791, very different views suggested themselves to the Government, and instead of shackling trade, by the inconvenient restrictions above mentioned, it was deemed wise and proper to free it from such restraints, and throw it open to the King's subjects without distinction. This was effected by the Provincial Ordinance 31 Geo. III. c. 1. in the preamble to which it was stated to be expedient to the prosperity of commerce, that it should be unclogged with unnecessary impediments. With this view the Legislature, in the 3d section of the latter Ordinance, declared its intentions and will in the following words—“ And to the  
“ end that the trade to the Western Districts and Indian  
“ Countries may be free and open to all His Majesty's subjects,  
“ *in every part of His Majesty's Inland Dominions and*  
“ *Territories whatsoever*, Be it enacted, that from and after the  
“ publication of this Act, it shall not be necessary for any of

"His Majesty's subjects carrying on trade, or other stated residents of this Province, to take out any where, or from any person or persons, any licence, pass, permit, or other writing whatsoever, for going into, or trading with the Indians or other inhabitants of the Western Countries, Districts, or Counties of this Province, or Territories whatsoever, or for the carrying or conveying thither or elsewhere, in boats, batteaux, or canoes, any goods, wares, or merchandizes, or provisions, or other effects, not specifically prohibited, or for returning with the same, or any part thereof, &c. nor to subject traders to take out licenses for the sale of spirituous liquors to Indians, except at a fixed residence in a settled part of the Province, for keeping a house of public entertainment, as is required by an Act of Parliament, passed in the 14th year of His Majesty's Reign," &c.

By the 6th section, the third enactment above mentioned, by which it was made penal to settle in Indian villages or counties, without a licence, was repealed, except as to such persons only, as not being His Majesty's subjects should arrive at any fort, post, or place, where any magistrate might reside, and should not, within twenty-four hours thereafter, take the oath of allegiance to the British Crown, &c.

By the two sections now cited, the regulations above mentioned, by which licences were required for trading with and selling liquors to the Indians, were repealed in the most unequivocal terms; and the necessity of a license for settling among them was dispensed with, not only as to the King's subjects, but even as to aliens who might take the oath of allegiance.

Upon the passing of this last ordinance, the inconvenient shackles on the Indian trade, which had previously existed, ceased; and, from that period to the present, no licence for trading with or settling among the Indians, within the limits of this province, has been issued; nor was it ever attempted, within my knowledge, till the institution of the *qui tam* actions referred to in your letter, to render it penal to trade with Indians, or sell liquors to them without a license, in the unsettled parts of the country.

The trade with the Indians in the unsettled seigniories,

contiguous to the King's posts, as well as in all other parts of the Province, has been carried on without licenses. While Mr. Lampson, under an assignment of a lease of the King's Posts, has for several years carried on trade there with the Indians, the Hudson's Bay Company, as lessees of contiguous unsettled seigniories, have, in like manner, and as had been done by their predecessors in possession of those seigniories, carried on trade with the Indians without licenses.

It is under these circumstances, that one George Linton, a constable of this place, at the instigation and expense, there is no doubt, of Mr. Lampson, and for the purpose of harassing and annoying the Hudson's Bay Company in their trade, caused *qui tam* actions to be brought in his name, towards the close of last autumn, against Robert Cowie, a chief factor of the Hudson's Bay Company, having the charge and management of their trade within the Seigniorie of Mille-Vaches, and against William Davis, a clerk, and Elie Boucher, a hired servant, acting under the orders of Mr. Cowie, for penalties supposed to have been incurred by them, by the sale of spirituous liquors to Indians without a license, contrary to the provisions of the above mentioned Ordinance of 17 Geo. III. c. 7.

After the institution of these actions Mr. M'Kenzie, the agent of the Hudson's Bay Company, not aware, it would appear, that there had been an express repeal of the provisions of this Ordinance, requiring Licences, and considering the actions to be vexations and malicious, applied to His Excellency, for a pardon for the past, and a Licence for the future, in order to obviate the abuse which had been and was likely in future to be made, of the provisions of the Ordinance. This application having been referred to me, by order of His Excellency, I had the honour, in my report of the 25th November last, of stating, for His Excellency's information, that the provision of the Ordinance, on which these actions had been grounded, was repealed by the above-mentioned Ordinance of the 31st Geo. III. c. 1, and that neither pardon nor licence, as prayed for, on the part of the Hudson's Bay Company, was necessary.—These actions, it would appear, were afterwards brought under the cognizance of John Neilson, J. B. Duchesnay, and Thomas Wilson, Esquires, as Justices of the Peace, before whom it was urged that the

provisions of the Ordinance in question had been repealed, and, it would also appear, that my report and opinion to His Excellency to this effect was produced and read to these Magistrates, who preferring the conclusion to which they were led by their own legal knowledge, to the opinion of the Attorney General, held the provision of the Ordinance to be in force, and imposed a fine of 5*l.* and an imprisonment of twenty-four hours, on each of the defendants. Although all the circumstances connected with these prosecutions were fully disclosed to the Magistrates, including the application to His Excellency for a pardon, they, notwithstanding, immediately issued their warrants against Messrs. Cowie and Davis, who were then at Mille-Vaches, distant upwards of one hundred and fifty miles from Quebec, to bring them up, at the then most inclement season of the year, to undergo an imprisonment of twenty-four hours in the latter place.

It is to induce the Government of this Province to sustain these proceedings, as being legal and justifiable, that Messrs. Neilson, Duchesnay, and Wilson have addressed to His Excellency the applications mentioned in your letter.

On these applications I have, in the first place, to observe, that after the report and opinion above referred to, which I have given on the subject of these actions, I cannot, of course, contrary to the conviction of my understanding, and my sense of official duty, afford to the Magistrates the assistance they desire. But I deem it also to be my duty, respectfully to submit, for the consideration of His Excellency, that the Magistrates above named, in my humble opinion, have no claim, nor is it fit or expedient that they should receive, the assistance for which they apply, from any of His Majesty's law servants, at the public expense.

The reasons for this opinion, I beg leave respectfully to state, are the following:—

1st.—Magistrates have not, and cannot be supposed to have, any interest in sustaining the validity of their judgments, when carried before a superior tribunal, by a writ of *certiorari*. The person interested in this object is the private prosecutor, or informer, by whom these judgments have been solicited, and on whom it is incumbent, for his own interest, and at his own

expense, to take such steps as he may be advised, to maintain and render effectual the judgments or convictions which he has obtained. In these particular cases, therefore, it is the proper duty of Linton, the informer, to maintain the validity of the convictions in question, at his own expense.

2d.—If there be any deviation from the principle now expressed, such deviation, I humbly apprehend, ought only to take place, in cases where, on the grounds of public policy or interest, it might be expedient that the convictions and judgments of Magistrates should be sustained; in which cases, it would be reasonable and proper, that the services of Counsel for the Crown should be afforded, in support of the decisions of the Magistrates, at the public expense.

3d.—In these particular cases there are, in my humble opinion, no grounds of public policy or interest, to make it fit or expedient, that the Magistrates should have the support of the Crown Officers, at the public expense; on the contrary, considerations of this nature militate, conclusively, against any such support. In the cases referred to, the Magistrates have taken upon themselves to enforce the provisions of a law which, it is most manifest, were repealed thirty-nine years ago,—provisions which have since remained a dead letter,—which are wholly inapplicable to the present state and condition of the Province,—and which, if now in force, it would be the first care of the Legislature to repeal, without delay; and these provisions have been so enforced, at the instance of a party, not actuated by fair motives, under circumstances of peculiar hardship to the persons affected by them, and in direct opposition to the opinion of the first law officer of the Crown.

These being the reasons on which my opinion is grounded, I have only further respectfully to observe, that if they do not afford satisfaction, the subject admits of being referred to other of His Majesty's law servants.

I have the honour to be Sir,

Your most obedient, humble servant,

(Signed) J. STUART,  
*Attorney General.*

True Copy, J. STUART.

*Letter from JAMES STUART, Esquire, His Majesty's Attorney General, to Lieutenant-Colonel, GLEGG, Secretary, &c.*

*Quebec, 24th Dec. 1830.*

SIR,

I have been honoured with the commands of His Excellency the Administrator of the Government, signified in your letter of the 23d instant, in which His Lordship refers to a Petition from Mr. Lampson, wherein it is stated, that he is engaged in a law suit respecting the boundary of the Seigniory of Mille-Vaches, in which law suit, as he states, the interests of the Crown are identified with his own, and wherein it is also stated, that I am retained as counsel for the party opposed to him; whereupon His Lordship has been pleased to require me to report, for his information, whether the assertion of Mr. Lampson, of my being retained by the opposite party is correct, and whether, in my opinion, the interests of the Crown are identified with those of Mr. Lampson, as stated by him in his Petition.

In obedience to His Lordship's commands, I have the honour to state, that the duty of the office of Attorney General, which I have the honour of holding, necessarily precludes me from taking any retainer to support the interests of individuals, in opposition to, or inconsistent with those of the Crown; and I have not therefore become, nor could be, retained by any party adverse to Mr. Lampson, to oppose, or question interests in him, which are identified with those of the Crown.

The case to which Mr. Lampson, I presume, refers, and which it has been erroneously supposed by him furnishes ground for his assertion, is a possessory action, called in the French law an action "de Réintégrande," (being the "Interdictum unde vi" of the Roman law,) recently brought by me for the Hudson's Bay Company against Mr. Lampson and his servants, for having with force and arms entered upon a piece of land which then

was, and during a long period previously had been in the peaceable possession of the Hudson's Bay Company, as lessees of the seignior of "Mille-Vaches;" for having expelled therefrom the servants of that company, for having commenced the erection of and erected a house, buildings, and fence thereon, and for having since forcibly retained possession thereof, &c. This action turns exclusively on the alledged fact of possession in the Hudson's Bay Company, at the time of the trespass complained of, without reference to boundaries or right of property. In this action, the boundaries between "Mille Vaches" and the adjoining waste lands of the Crown, of which Mr. Lampson is lessee, cannot come in question or be litigated; nor can any right or interest of the Crown be, in the smallest degree, promoted, injured, or affected by the proceedings to be had, or the decision to be given in this action. The ground on which this action rests is that of unjust spoliation, by force and violence, and the rule of law applicable to it is—*Spoliatus ante omnia restituendus est*.

If, as alledged by the Hudson's Bay Company, they have been by force dispossessed by Mr. Lampson, of land which was in their peaceable possession, they must recover judgment against him in this action, even though he was the lawful proprietor of the land. The law in such case requires that the despoiled party be re-instated in possession, before the question of right can be litigated; and this can only be done in a *petitory* action, to be brought by the party which claims the right of property. It is manifest, therefore, that Mr. Lampson could derive no benefit in this action, from a right of property in His Majesty, even if such right existed; and it is equally manifest, therefore, that the interests of the Crown are in no respect identified with those of Mr. Lampson in this matter. He has chosen to incur the high responsibility of taking the law into his own hands, and he must abide the result. The Crown is a stranger to the illegal acts complained of by the Hudson's Bay Company, and cannot and ought not to be implicated in the consequences of them.

I will only beg leave further to add, that if it be supposed that any part of the waste lands of the Crown are included within limits improperly ascribed to the Seignior of Mille-



**Vaches**, the remedy for the recovery of it would be found, not in any interference on the part of the Crown in the differences between Mr. Lampson and the Hudson's Bay Company, (as Mr. Lampson would seem to desire,) nor in any action against that Company, but in an action against the lessors of the Hudson's Bay Company, proprietors of the seigniory of Mille-Vaches, for the establishment of boundaries between that seigniory and the adjoining lands of the Crown.

I have the honour to be, Sir,

Your most obedient, humble servant,

(Signed) J. STUART,  
*Attorney General.*

True Copy, J. STUART.

---

*Letter from Lieut.-Col. GLEGG, Secretary, to J. STUART, Esq.  
Attorney-General.*

*Castle of St. Lewis, Quebec, 29th Dec. 1830.*

SIR,

His Excellency the Administrator of the Government has directed me to signify to you, in reply to your letter of the 24th instant, (received by me on the 27th,) that his mind is much relieved by the assurance which that letter conveys, viz. that the interests of the Crown are not involved in the case of Mr. Lampson, to whom it appears you stand professionally opposed as counsel, in a cause pending between him and the Hudson's Bay Company; more especially as this assurance enables His Excellency to call without scruple, for your professional services as Attorney General, in a matter arising out of the statement contained in the Petition of Mr. Lampson, alluded to in my letter of the 23d instant. It appears by the Petition of Mr. Lampson, that he is sub-lessee of the lands known by the name of the King's Posts, which are held under the Crown, and he complains that he is incommoded in the enjoyment of the same, owing to the circumstance of the boundary

expense, to take such steps as he may be advised, to maintain and render effectual the judgments or convictions which he has obtained. In these particular cases, therefore, it is the proper duty of Linton, the informer, to maintain the validity of the convictions in question, at his own expense.

2d.—If there be any deviation from the principle now expressed, such deviation, I humbly apprehend, ought only to take place, in cases where, on the grounds of public policy or interest, it might be expedient that the convictions and judgments of Magistrates should be sustained; in which cases, it would be reasonable and proper, that the services of Counsel for the Crown should be afforded, in support of the decisions of the Magistrates, at the public expense.

3d.—In these particular cases there are, in my humble opinion, no grounds of public policy or interest, to make it fit or expedient, that the Magistrates should have the support of the Crown Officers, at the public expense; on the contrary, considerations of this nature militate, conclusively, against any such support. In the cases referred to, the Magistrates have taken upon themselves to enforce the provisions of a law which, it is most manifest, were repealed thirty-nine years ago,—provisions which have since remained a dead letter,—which are wholly inapplicable to the present state and condition of the Province,—and which, if now in force, it would be the first care of the Legislature to repeal, without delay; and these provisions have been so enforced, at the instance of a party, not actuated by fair motives, under circumstances of peculiar hardship to the persons affected by them, and in direct opposition to the opinion of the first law officer of the Crown.

These being the reasons on which my opinion is grounded, I have only further respectfully to observe, that if they do not afford satisfaction, the subject admits of being referred to other of His Majesty's law servants.

I have the honour to be Sir,

Your most obedient, humble servant,

(Signed) J. STUART,  
*Attorney General.*

True Copy, J. STUART.

*Letter from JAMES STUART, Esquire, His Majesty's Attorney General, to Lieutenant-Colonel, GLEGG, Secretary, &c.*

*Quebec, 24th Dec. 1830.*

SIR,

I have been honoured with the commands of His Excellency the Administrator of the Government, signified in your letter of the 23d instant, in which His Lordship refers to a Petition from Mr. Lampson, wherein it is stated, that he is engaged in a law suit respecting the boundary of the Seignior of Mille-Vaches, in which law suit, as he states, the interests of the Crown are identified with his own, and wherein it is also stated, that I am retained as counsel for the party opposed to him; whereupon His Lordship has been pleased to require me to report, for his information, whether the assertion of Mr. Lampson, of my being retained by the opposite party is correct, and whether, in my opinion, the interests of the Crown are identified with those of Mr. Lampson, as stated by him in his Petition.

In obedience to His Lordship's commands, I have the honour to state, that the duty of the office of Attorney General, which I have the honour of holding, necessarily precludes me from taking any retainer to support the interests of individuals, in opposition to, or inconsistent with those of the Crown; and I have not therefore become, nor could be, retained by any party adverse to Mr. Lampson, to oppose, or question interests in him, which are identified with those of the Crown.

The case to which Mr. Lampson, I presume, refers, and which it has been erroneously supposed by him furnishes ground for his assertion, is a possessory action, called in the French law an action "de Réintégrande," (being the "Interdictum unde vi" of the Roman law,) recently brought by me for the Hudson's Bay Company against Mr. Lampson and his servants, for having with force and arms entered upon a piece of land which then

was, and during a long period previously had been in the peaceable possession of the Hudson's Bay Company, as lessees of the seignior of "Mille-Vaches;" for having expelled therefrom the servants of that company, for having commenced the erection of and erected a house, buildings, and fence thereon, and for having since forcibly retained possession thereof, &c. This action turns exclusively on the alledged fact of possession in the Hudson's Bay Company, at the time of the trespass complained of, without reference to boundaries or right of property. In this action, the boundaries between "Mille Vaches" and the adjoining waste lands of the Crown, of which Mr. Lampson is lessee, cannot come in question or be litigated; nor can any right or interest of the Crown be, in the smallest degree, promoted, injured, or affected by the proceedings to be had, or the decision to be given in this action. The ground on which this action rests is that of unjust spoliation, by force and violence, and the rule of law applicable to it is—*Spoliatus ante omnia restituendus est.*

If, as alledged by the Hudson's Bay Company, they have been by force dispossessed by Mr. Lampson, of land which was in their peaceable possession, they must recover judgment against him in this action, even though he was the lawful proprietor of the land. The law in such case requires that the despoiled party be re-instated in possession, before the question of right can be litigated; and this can only be done in a *petitory* action, to be brought by the party which claims the right of property. It is manifest, therefore, that Mr. Lampson could derive no benefit in this action, from a right of property in His Majesty, even if such right existed; and it is equally manifest, therefore, that the interests of the Crown are in no respect identified with those of Mr. Lampson in this matter. He has chosen to incur the high responsibility of taking the law into his own hands, and he must abide the result. The Crown is a stranger to the illegal acts complained of by the Hudson's Bay Company, and cannot and ought not to be implicated in the consequences of them.

I will only beg leave further to add, that if it be supposed that any part of the waste lands of the Crown are included within limits improperly ascribed to the Seignior of Mille-

Vaches, the remedy for the recovery of it would be found, not in any interference on the part of the Crown in the differences between Mr. Lampson and the Hudson's Bay Company, (as Mr. Lampson would seem to desire,) nor in any action against that Company, but in an action against the lessors of the Hudson's Bay Company, proprietors of the seigniory of Mille-Vaches, for the establishment of boundaries between that seigniory and the adjoining lands of the Crown.

I have the honour to be, Sir,

Your most obedient, humble servant,

(Signed) J. STUART,  
*Attorney General.*

True Copy, J. STUART.

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*Letter from Lieut.-Col. GLEGG, Secretary, to J. STUART, Esq.  
Attorney-General.*

*Castle of St. Lewis, Quebec, 29th Dec. 1830.*

SIR,

His Excellency the Administrator of the Government has directed me to signify to you, in reply to your letter of the 24th instant, (received by me on the 27th,) that his mind is much relieved by the assurance which that letter conveys, viz. that the interests of the Crown are not involved in the case of Mr. Lampson, to whom it appears you stand professionally opposed as counsel, in a cause pending between him and the Hudson's Bay Company; more especially as this assurance enables His Excellency to call without scruple, for your professional services as Attorney General, in a matter arising out of the statement contained in the Petition of Mr. Lampson, alluded to in my letter of the 23d instant. It appears by the Petition of Mr. Lampson, that he is sub-lessee of the lands known by the name of the King's Posts, which are held under the Crown, and he complains that he is incommoded in the enjoyment of the same, owing to the circumstance of the boundary

of a seigniory called Mille-Vaches (which seigniory touches on the lands called the King's Posts) not being accurately defined; and he appeals to the justice of the Crown, as possessor of the King's Posts, to put an end to this state of uncertainty, by causing the metes and boundaries of Mille-Vaches, to be accurately surveyed and defined. Applying to the present case the principle which would naturally guide individuals, in private life, under similar circumstances, the Administrator of the Government is clearly of opinion, that the appeal of Mr. Lampson to the Crown is founded in justice and equity, and that it is incumbent on the Crown, as possessor, and not on Mr. Lampson, as sub-lessee, to establish the boundary in question. His Excellency has, therefore, come to the decision, to comply with the prayer of Mr. Lampson's Petition, by directing the necessary legal steps to be taken towards establishing the boundaries and metes of the seigniory of Mille-Vaches. With the view of giving due effect to these intentions, His Lordship has thought proper to associate yourself and the Advocate General, to act together on behalf of the Crown; and His Excellency therefore desires, that you will be pleased to communicate with Mr. Vanfelson, on the subject, and concert with him the measures necessary to be adopted, in order to give effect to His Lordship's intentions, reporting to me, for his information, the result of such communication, with the least possible delay.

I have the honour to be, Sir,

Your obedient, humble servant,

J. B. GLEGG, *Secretary.*

Honourable J. STUART, Attorney General.

True Copy, J. STUART.

*Letter from JAMES STUART, Esq. His Majesty's Attorney General, to Lieut.-Col. GLEGG, Secretary, &c.*

Quebec, 30th Dec. 1830.

SIR,

I have been honoured with your letter of the 29th instant, in which, with reference to legal steps which it is therein stated, His Excellency the Administrator of the Government has come to the decision of directing to be taken, towards establishing the boundaries and metes of the Seignior of Mille-Vaches, it is intimated that his Excellency has thought proper to associate me and the Advocate General, to act together on behalf of the Crown, and that his Excellency therefore desires me to communicate with Mr. Vanfelson on the subject, and to concert with him the measures necessary to be adopted, in order to give effect to his Lordship's intentions, reporting to you for his information, the result of such communications with the least possible delay.

From the nature of this communication, as well as that which preceded it, on the same subject, it seems indispensable that I should respectfully submit to his Excellency's consideration, that it belongs to the office of Attorney General, to advise, institute, defend, and conduct all suits of the Crown, which are carried on in His Majesty's Courts of Justice, in which that officer acts professionally. These duties are by law inherent in the office, and cannot be severed from it:—for the faithful, skilful, and honest discharge of them the officer is responsible; and this responsibility constitutes the security of the public and of individuals, in so far as their respective interests are concerned. Not being conscious of any inability to fulfil the duties of the office I hold, and not having learnt that my honour or integrity has been impeached, I must beg leave to claim from his Excellency the undisturbed and unrestricted exercise of the rights vested in me by His Majesty's Commission, appointing me his Attorney General for Lower Canada. If, however, any charge or report calculated to impair the confidence of His Majesty's



Government in the upright discharge of my duties has reached his Excellency, instead of sustaining any abridgment of the rights now referred to, I must solicit from his Excellency's justice an immediate investigation of the imputation, whatever it may be, that no disparagement may be suffered by the honourable service in which I am engaged, from malignant insinuation or unfounded suspicion. But, in the absence of any such cause for withholding the confidence which is due to the office with which His Majesty has honoured me, and while I continue to hold this office, I cannot acquiesce in any transfer of the duties legally incident to it to another person; nor can I submit to become the auxiliary of Mr. Vanfelson, or of any other professional gentleman, in matters in which it belongs to me to act as principal.

I have the honour to be, Sir,

Your most obedient, humble Servant,

(Signed) J. STUART,  
*Attorney General.*

Lient. Col. GLEGG, Secretary, &c.

True Copy, J. STUART.

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*Letter from Lient. Col. GLEGG, Secretary, &c. to J. STUART,  
Esq. Attorney General,*

*Castle of St. Lewis, Quebec 30th Dec. 1830.*

SIR,

I am directed by His Excellency the Administrator of the Government, to lose no time in assuring you, in answer to your letter of this date (which his Lordship has just perused) that his decision regarding the mode to be adopted in the case of Mr. Lampson, does not in the remotest degree arise from any doubt existing in his mind of either your integrity and honour, or of your professional ability. To the existence of these qualities in your person, His Excellency is disposed to

give full and entire belief: neither have his decisions been caused by any malicious insinuations regarding your character that have reached his ears.

His Lordship commands me to assure you, he is altogether a stranger to any such insinuations, and had they been conveyed to him, he would not have hesitated for one moment candidly and honestly to have imparted them to you.

A due regard to your official character as well as to his own would have rendered such a communication an important duty on his part, and perhaps he may have some right to add, that his silence on the subject might have been assumed as conclusive of the fact of his mind being entirely free from any such impression. Having disposed of this part of the subject, which His Excellency has most at heart to do, in a way that may be entirely satisfactory to your feelings, he has directed me to add, that unless he has formed very erroneous notions of the functions of the office which he has the honour of filling as Administrator of this Province, he may be permitted to judge for himself, whether he shall associate one or more of the Law Officers of the Crown, in the conduct and management of any particular proceeding.

His Lordship still thinks, that he is invested with such discretionary power, and acting upon that assumption, his Lordship has directed me to request you will have the goodness to acquaint me, for his information, whether it be your intention to persist in refusing to act in conjunction with the Advocate General, in the matter of determining the metes and boundary of the Seignior of Mille Vaches, as directed in my letter of the 29th instant.

I have the honour to be, Sir,

your obedient, humble servant,

(Signed) J. B. GLEGG, Secretary.

Honble. J. STUART, Attorney General.

True Copy, J. STUART.

*Note from His Excellency Lord AYLMER to JAMES STUART,  
Esq. Attorney General.*

(Private)

*Castle of St. Lewis, Quebec, 30th Dec. 1830.*

MY DEAR SIR,

An official correspondence is now going forward between us through the medium of Lieut. Col. Glegg, which I do assure you is very painful to me; but I hope and trust, it will not have the effect of producing any change in the social intercourse, and those personal feelings of regard between us, which it is very much my desire to cherish and cultivate to the utmost. An assurance, on your part, that you participate in these feelings would be highly gratifying to, my dear Sir,

Your very faithful servant,

(Signed) AYLMER.

True Copy, J. STUART.

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*Letter of J. STUART, Esq. Attorney General, to Lieut. Col.  
GLEGG, Secretary, &c.*

*Quebec, 31st December, 1830.*

SIR,

I have been honoured with your letter of the 30th inst. and beg leave to state, that I have derived the greatest satisfaction from the assurances His Excellency the Administrator of the Government, has been pleased to convey to me, that, in his directions respecting the suit to settle the boundaries of "Mille Vaches," he was not influenced by any doubt of my integrity or honour, and my most respectful acknowledgments are due for the terms in which these assurances have been conveyed.

In stating, in my last letter, the rights which I apprehend to be inherent in the office of Attorney General, it was not my intention to call in question the discretionary power of His Excellency, to authorise any number of Counsel he may think fit, to give their assistance in the conducting of the suits of the Crown, but respectfully to assert, that they cannot act as principals, or direct or control the Attorney General in the management of such suits; the responsibility for the proper and efficient conducting of the suits of the Crown resting entirely upon him. I beg leave, therefore, respectfully to mention, that there is no objection on my part, that the Advocate General, or any other professional gentleman, be authorised to act as Counsel, in conjunction with me, in the legal measures which it may be proper to adopt, for determining the metes and boundaries of the Seignior of Mille Vaches; and, on this head, there is the most ready and willing acquiescence on my part in whatever may be the pleasure of His Lordship.

I have the honour to be, Sir,

Your most obedient, humble servant,

(Signed) J. STUART,  
*Attorney General.*

Lieut. Col. GLEGG, Secretary, &c.

True Copy, J. STUART.

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*Note from J. STUART, Esq. Attorney General, to His Excellency Lord AYLMER.*

(Private)

*Friday Morning, 31st December.*

MY LORD,

It was with extreme satisfaction that I perused your Lordship's very friendly and condescending note of last evening, by which the painful feelings necessarily produced by the recent correspondence to which your Lordship refers, were made immediately to yield to those of a very different cha-

racter. The impressions of respect for your Lordship which I had previously entertained, have received an indelible confirmation from your Lordship's frankness, kindness, and condescension on the present occasion; and I beg leave respectfully to assure your Lordship, that it will be my most anxious desire, both in my official and private conduct, to merit a continuance of your Lordship's favourable opinion, and of the social intercourse by which I have been honoured by your Lordship.

I have the honour to be, my Lord,

With the greatest respect,

Your Lordship's most faithful and

Obliged humble servant,

(Signed) J. STUART.

Lieut. Col. GLEGG, Secretary, &c.

True Copy, J. STUART.

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No. 5, p. 164.

*Letter from JAMES STUART, Esquire, His Majesty's Attorney General, to Lieutenant-Colonel, GLEGG, Secretary, &c.*

Quebec, 18th April, 1831.

SIR,

In the course of a cursory perusal of Newspapers published in this Province, I have observed that, among the reported proceedings of the House of Assembly, is the adoption by that House, on the 23d March last, of certain resolutions criminating me, for alleged misconduct as Attorney General, in relation to certain disputes between the Hudson's Bay Company and William Lampeon, lessee of the King's Posts. I have also observed, that it is therein stated, that a copy of these resolutions, by order of the House, was to be presented to His Excellency the Governor-in-Chief, with a request that

he would be pleased to transmit the same to be laid at the foot of the throne.

Not having received from His Excellency the Governor-in-chief any information or intimation, that any such criminatory resolutions had been laid before His Excellency, or that any Address had been presented to His Excellency, to transmit any such resolutions to His Majesty's Secretary of State, or any communication whatever from His Excellency, in relation to any such resolutions, I am led to suppose, that the statements, now referred to in the newspapers must necessarily be erroneous.

That I may be relieved from all uncertainty on this head, I request you will submit to His Excellency my respectful application to be informed, whether any resolutions of the nature of those above mentioned, have been laid before His Excellency; and, if they have, that I may be made acquainted with the nature of them, in so far as the authority of His Excellency may have been referred to or interposed.

I have the honour to be, Sir,

Your most obedient, humble servant,

J. STUART,  
*Attorney General.*

Lieu. Col. GLEGG, Secretary, &c.

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*Letter from Lieut.-Col. GLEGG, Secretary, to J. STUART, Esq.  
Attorney-General.*

*Quebec, 19th April, 1831.*

SIR,

Having submitted your letter of the 18th inst. to His Excellency the Governor-in-Chief, I am commanded to transmit you a copy of the Resolutions of the House of Assembly, dated the 28th March, with His Excellency's answer thereto, dated the day following.

DD

I have also received directions to inclose you a copy of His Excellency's Message to the House of Assembly, dated the twenty-eighth March, in which you will see that His Excellency relies on the justice of that House, to furnish you with copies of the various documents upon which the charges against you are founded.

Having by direction of His Excellency made application to the Clerk of the House of Assembly, for copies of the documents in relation to certain disputes between the Hudson's Bay Company and Wm. Lampson, lessee of the King's Posts, I have been informed that they are now printing, and will be transmitted to you the moment they are ready, which, it is hoped, will take place in about ten days.

I have the honour to be, Sir,

Your most humble, obedient servant,

(Signed) J. B. GLEGG, Secretary.

Honourable the Attorney General.

True Copy, J. STUART.

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*Copy of the Resolutions of the Assembly of Lower Canada of the 28th March, 1831, and of the Answer of His Excellency the Governor-in-Chief, referred to in the foregoing Letter.*

*House of Assembly, Monday, 28th March, 1831.*

Resolved—That the Attorney General of this Province is, both by law and custom, the officer who is specially charged with the duty of maintaining the rights of the Crown, as well as those of the public, as the present Attorney General, James



Stuart, Esquire, expresses himself in his letter addressed to the Civil Secretary, and dated on the 24th day of December, 1830.

**Resolved**—That the Attorney General of this Province ought not to practise as a private Attorney, in any case where he might be placed in opposition to the interest of the Crown and of the public, who are exclusively entitled to his services.

**Resolved**—That the said James Stuart, Esquire, Attorney General as aforesaid, did, in the matters relating to the complaints made by the Petitioner William Lampson, become Counsel and Attorney for the partners, servants, or agents of the Hudson's Bay Company.

**Resolved**—That by thus becoming Counsel and Attorney for the above-mentioned individuals, the said James Stuart, Esquire, placed himself in opposition to the interests of the lessee of the Crown, and by a necessary consequence also in opposition to the interests of the Crown itself.

**Resolved**—That the conduct of the said James Stuart, Esquire, on the occasion of the disputes pending between the Hudson's Bay Company, and the lessee of the Crown for the King's Posts, has been exceedingly unjust, vexatious, and equally injurious to the rights and interests of the Crown and those of its lessee, in the enjoyment of the Posts known by the name of the King's Posts.

**Resolved**—That the House perceive, in this conduct of the said James Stuart, a new motive to solicit His Majesty's Government to dismiss him from his situation of Attorney General of this Province.

**Resolved**—That a copy of the said resolutions be presented to His Excellency the Governor-in-Chief, as well as a copy of the report and evidence upon which the said resolutions are founded, with a request that he will be pleased to transmit the same to be laid at the foot of the throne.

**ANSWER.****GENTLEMEN,**

Upon receiving the documents adverted to in this address, the same shall be transmitted by me to the Secretary of State for the Colonial Department, for the purpose of being laid at the foot of the throne, in compliance with the desire of the House of Assembly.

(Signed) **AYLMER**, Governor-in-Chief.

Castle of St. Lewis, Quebec, 29th March, 1831.

True Copy, (Signed) **J. B. GLEGG**, Secretary.

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*Letter from B. C. A. GUGY, to JAMES STUART, Esquire, His Majesty's Attorney-General.*

*Quebec, 30th August, 1830.*

**SIR,**

I am retained to defend the agents and servants of the lessees of the King's Posts, who are accused of certain trespasses upon the persons and property of the agents of the Hudson's Bay Company; and I therefore hope it will not prove offensive to you, that I should inquire whether or not it be your intention to try those cases the next ensuing Term. I beg you will have the goodness to make me acquainted with your determination, as not only the accused, but their witnesses and others interested, would govern themselves accordingly, and thus abide by the result with the least possible expence and vexation.

I have the honour to be, Sir,

Your most obedient servant,

(Signed) **A. GUGY.**

Honourable the Attorney General.

True Copy, **J. STUART.**

*Affidavit of ANTHONY VON IFFLAND, Esquire, Doctor of  
Physic, residing at Sorel, in Lower Canada.*

PROVINCE OF LOWER CANADA.

DISTRICT OF }  
QUEBEC. } To wit:

ANTHONY VON IFFLAND, of the Borough of William-Henry, in the Province of Lower Canada, Esquire, Doctor of Physic, maketh oath, that he has known upwards of eight years, one Pierre Louis Deligalle, of the said Borough, being the same person who was examined as a witness before a Committee of Grievances of the House of Assembly of Lower Canada, on the first day of March now last past. And the deponent further saith, that the said Pierre Louis Deligalle has been, for a considerable time, and continues to be, a confirmed drunkard, in indigent circumstances, and of bad character, to whose statements, even on oath, the deponent would not give credit. And further the deponent saith not.

(Signed) A. VON IFFLAND, M.D.

*Sworn at the City of Quebec, this 2d day  
of May, 1831, before me,*

(Signed) J. KERR, J.B.R. Quebec.

True Copy, J. STUART.

*Affidavit of ROBERT JONES, Esquire.*

## PROVINCE OF LOWER CANADA.

DISTRICT OF }  
MONTREAL. }

ROBERT JONES, of the Borough of William-Henry, in the said District, Esquire, Lieutenant-Colonel in the Militia, in the said Province, commanding the third battalion of the Richelieu Militia, and one of His Majesty's Justices of the Peace for the said District, maketh oath and saith, that he hath resided for upwards of fifty years in the said Borough. That he is well acquainted with the character of one Pierre Louis Deligalle, Bailiff, who resides at William Henry aforesaid. That he has known the said Pierre Louis Deligalle for these six or seven years; that his general character has been such, and is so worthless, that he, this deponent, would not believe any statement or assertion made by him, although it were under the obligation of an oath.

(Signed) R. JONES.

*Sworn before me at Montreal, in the said District,  
this 3rd day of August, 1831,*

(Signed) JOS. SHUTER, J.F.

True Copy, J. STUART.

*Copy of an Account of PIERRE LOUIS DELIGALLE against JAMES STUART, Esq., for having apprehended, under a Warrant of a Justice of the Peace, certain Voters at the Election held at Sorel in July, 1827, on a charge of Perjury.*

JAMES STUART, Esq.,  
 Etorney Geneal for the Province,

Dr. to PETER LS DELLIGALL, H.B.R.

July 28, 1827,		<i>l.</i>	<i>s.</i>	<i>d.</i>
For apprehending the body of Nicolas Buckner, in vertue of a Warrant signed by A. Von Iffland, Esq.	0	5	0	
Record Denis Capplet .....	0	2	6	
For apprehending the body of R. St. Michel .....	0	5	0	
Record Denis Capplet .....	0	2	6	
Aug. 6, 1827,				
For apprehending the body of Antoine Paulet Hus dit Counoyer .....	0	5	0	
Record Denis Capl .....	0	2	6	
		<hr/>	<hr/>	
		1	2	6

Received payment,

P. L. DELLIGALL, H.B.R.

Willim Henry, 8th August, 1827.

True Copy, J. STUART.

*Copy of an Account of PETER TRIGANNE against JAMES STUART, Esq. for having apprehended, under a Warrant of a Justice of the Peace, certain Voters at the Election held at Sorel in July, 1827, on a charge of Perjury.*

JAMES STUART, Esq.  
His Majesty's Attorney General for the Province  
of Lower Canada,

Dr. to PETER TRIGANNE, H.B.R.

July 27, 1827, l. s. d.

To service and apprehending, by virtue of a Warrant issued by A. V. Iffland, Esq. one of His Majesty's Justices of the Peace for the District of Montreal, the body of Louis Allard .....	0	10	0
To Record .....	0	5	0
Distance one league .....	0	2	0

July 28, 1827,

To apprehending the body of M. Neveu, in virtue of a Warrant issued by A. V. Iffland, Esq. J. P.....	0	10	0
To Record .....	0	5	0
Distance six leagues, at 2s. per league.....	0	12	0
To carriage to convey the said M. Neveu .....	0	6	0

Aug. 3, 1827,

To apprehending the body of Antoine Ausant, in virtue of a Warrant issued by A. V. Iffland, Esq. J. P.	0	10	0
To Record.....	0	5	0
Distance one league .....	0	2	0

Aug. 4, 1827,

To apprehending the body of Jean Baptiste Cantara, in virtue of a Warrant issued by A. V. Iffland, J. P.	0	10	0
To Record.....	0	5	0
Distance one league .....	0	2	0

Aug. 7, 1827,	<i>l.</i>	<i>s.</i>	<i>d.</i>
To apprehending the body of Joseph Claprood, in virtue of a Warrant issued by A. V. Iffland, Esq. J. P.	0	10	0
To Record.....	0	5	0
Distance one league .....	0	2	0
	<hr/>		
	5	1	0

I hereby certify that Pierre Trigranne has served the above-mentioned Warrants, and that I believe the charges are according to the tariff of bailiffs submitted to me.

(Signed) A. V. IFFLAND, J. P.

Reçu le Montant du present compte,

(Signé) PIERRE TRIGANNE, H.

True Copy, J. STUART.

*Letter from ROBERT W. HAY, Esquire, Under Secretary of State, to JAMES STUART, Esq.*

*Downing-street, 26th August, 1831.*

SIR,

I have received the directions of Lord Goderich to transmit to you the inclosed copy of an Extract of a Letter addressed by Mr. Viger to myself, and to request that you will, at your earliest convenience, enable me to reply to the question proposed by Mr. Viger.

I have the honour to be, Sir,

Your most obedient, humble Servant,

(Signed) R. W. HAY.

J. STUART, Esquire.



*Extract of a Letter from MR. VIGER to ROBERT W. HAY, Esquire, Under Secretary of State, dated 23d August, 1831, referred to in the preceding Letter.*

“J’ai donné à l’examen de ces papiers autant d’attention que ce court espace de tems me l’a permis; je n’y vois d’observations que relativement aux second et troisième rapports de l’Assemblée, et rien du tout quant au premier. Je vous prierais de vouloir bien m’informer si j’en dois conclure que Mr. Stuart ne se croit pas dans la nécessité de répondre à cet article des plaintes de l’Assemblée contre lui. Si au contraire, on avoit omis, par hazard, d’inclure les observations relativement à cet objet dans la liasse des papiers que j’ai reçus hier, je vous prierais de me les faire parvenir, à fin que je puisse traiter ces differens sujets dans l’ordre dans lequel ils ont été présentés, et doivent naturellement être discutés.

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*Letter from JAMES STUART, Esquire, to ROBERT W. HAY, Esquire, Under Secretary of State.*

*London, 8, Dover-street, 27th Aug. 1831.*

SIR,

I have been honoured with your Letter of the 26th instant, transmitting an Extract of a Letter from Mr. Viger, relating to the papers which I have lately had the honour to submit to His Majesty’s Government, on the subject of an Address of the Assembly, for my dismissal from office.

To obviate some misapprehension which appears to exist in Mr. Viger’s mind, in relation to this matter, it seems to be proper that I should explain to what papers Mr. Viger’s attention is now exclusively called. By the Address of the Assembly they have prayed that His Majesty would inflict on me the punishment of dismissal from office, for certain alleged offences, of which they have adjudged me guilty; and Mr. Viger has been deputed by the Assembly to sustain this Address. On

my part, I have had the honour to represent, by my humble Petition to His Majesty, and the Memoir in support of it, that I have been thus convicted and condemned by the Assembly on *ex parte* proceedings, without defence or hearing, or an opportunity for either, and that I am wholly guiltless of the offences imputed to me by the Assembly. On these grounds I pray that, before punishment is inflicted, I may be let in to prove my innocence. In substance, therefore, my Petition and Memoir are to be considered as an answer to the charges and Address of the Assembly; and Mr. Viger, I presume it is now expected, will furnish such reply as he may deem necessary, to sustain these charges and address. This, and this only, is the subject to which Mr. Viger's attention is now called.

In the extract you have done me the honour to transmit, Mr. Viger remarks, that my "observations," by which he means, I presume, my Petition and Memoir, apply to the second and third Reports only, and that nothing is said of the first. The charges and Address of the Assembly were founded solely on what is called the second Report of the Committee of Grievances; and my Petition and Memoir, therefore, have relation to this only, and do not touch at all on the other two Reports. It has been my intention, in justification of myself to His Majesty's Government, to give a satisfactory answer, in detail, to each and every statement and allegation, affecting my official conduct or character, which is to be found in the first and third Reports; and I am now employed in preparing this answer, which I purpose to submit, in the form of a letter, to be addressed to His Majesty's Secretary of State for the Colonies. But I did not conceive I could, without impropriety, notice the subject matter of either of these Reports in my Petition and Memoir; which, from considerations of fitness and propriety, are necessarily restricted to the Address of the Assembly, and the charges therein specified. Mr. Viger seems to confound the Reports of a Committee with charges preferred by the Assembly, and adverts to both under the denomination of "*Plaintes de l'Assemblée.*" They are, I apprehend, very different in their nature; and it is one of the singularities in the proceedings adopted against me, that I am called upon to defend myself against "*Charges,*" and also against Reports of

a Committee of the Assembly. These Reports in the opinion of the House of Assembly, either contained sufficient grounds for imputing to me official misconduct, or they did not; if they did, charges founded on them ought, I apprehend, to have been exhibited against me, to be embodied with the other charges which have been preferred: if they did not, the statements they contain injurious to my character, it appears to me, ought not to have been brought under the consideration of His Majesty's Government at all, or put into public circulation to my prejudice. But I am not come hither, I beg leave to mention, to oppose objections of form to the investigation of any complaint against me, in whatever manner and by whomsoever it may be made. I have, within the colony, for some time past, been most unjustly assailed by unfounded imputations and misrepresentations of my conduct, without having it in my power to refute them there. This opportunity I am happy is now afforded to me here; and I shall most gladly avail myself of it, not only to answer whatever imputations are to be found in the two Reports referred to by Mr Viger, but also any and every complaint or imputation which he may think proper, if so instructed, to add to them. In the mean time, and in order to avoid unnecessary delay, which is personally injurious to me, I hope Mr. Viger will find it convenient, within a short time, to furnish his reply on the only subject to which his attention is at present called, viz. my answer to the charges and address of the Assembly.

I have the honour to be, Sir,

Your most obedient, humble servant,

J. STUART,

ROBERT W. HAY, Esquire,  
Under Secretary of State, &c. &c. &c.

**EXTRACT FROM A MEMORIAL**

FROM

**JAMES STUART, ESQUIRE,**

TO

**THE RIGHT HON. LORD VISCOUNT GODERICH,***ONE OF HIS MAJESTY'S PRINCIPAL SECRETARIES OF STATE.*

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**THAT** your Memorialist, in pursuance of a Mandamus from His late Majesty, George the Fourth, was appointed His late Majesty's Attorney General for the province of Lower Canada, by Commission under the Great Seal of the said Province, bearing date the twenty-first day of January, in the year of our Lord one thousand eight hundred and twenty-five; and since the accession of His present Majesty, your Memorialist, in pursuance of His Majesty's Mandamus in this behalf, has been appointed His present Majesty's Attorney General for the said Province, by Commission under the Great Seal of the said Province, bearing date the Eleventh day of December now last past.

Although your Memorialist has discharged the duties of the said office, from the period of his first appointment, with unremitting attention, zealously, honestly, and faithfully, and, he trusts also, with adequate ability, he has recently, nevertheless, to his great mortification and injury, been subjected to suspension from his said office, by an order of His Excellency Lord AYLMER, Governor-in-Chief of the said Province; by which order he has reason to consider himself most unjustly aggrieved, and of which he now begs leave respectfully to submit his complaint to your Lordship's consideration.

Before proceeding to state the nature of this order of suspension, it is fit your Memorialist should make your Lordship acquainted with some circumstances which preceded it. In the discharge of his official duties, your Memorialist had been absent from Quebec about a month, in the upper parts of the Province, where his presence was required in the conducting of criminal prosecutions. Three days after his return, when diligently employed in preparations for the Court of King's Bench, immediately about to be opened at Quebec, as well as in other duties incident to his office, he learnt from a gentleman who called on him, that, the evening before, the House of Assembly had adopted a Resolution to address His Majesty to remove him from office, and to address His Excellency to suspend him until His Majesty's pleasure should be known. Your Memorialist was indeed aware, that a Committee of the Assembly, under the name of a Committee of Grievances, had, during the Session, been occupied in a scrutiny of various matters, in which it was supposed cause for imputing misconduct to your Memorialist might be found; but, being conscious that no materials for accusation against him could be derived from any part of his conduct, your Memorialist had continued in perfect security, and was entirely ignorant of the proceedings which were to terminate in the resolution above mentioned. As soon, therefore, as it could be done, on the 21st March, he submitted his application to His Excellency, by Letter to his Secretary, to be made acquainted with the nature of these proceedings, as well as with the charges on which they were founded, that he might be enabled to satisfy His Excellency that no cause had been afforded for the imputations with which he was assailed. In answer to this application, he was assured, by letter from Lieutenant Colonel Glegg, that His Excellency had received no official intimation of the proceedings in question; and that, at all times, and under all circumstances, your Memorialist might rely upon the justice and impartiality of His Excellency. Two days after, without any communication whatever to your Memorialist, of the information which the last mentioned letter led him to expect, your Memorialist received a letter from His Excellency's Secretary, apprizing him that an Address for his immediate suspension had been presented

to His Excellency; and, in the same letter, His Excellency was pleased to inform your Memorialist "That he greatly apprehended, that, in the end, it would be his painful duty to comply with the desire of the House of Assembly in this instance; unless he could be relieved from the adoption of such a measure, by some arrangement which should virtually accomplish the object of the House of Assembly, and, at the same time, be the least painful to the feelings of your Memorialist."

Your Memorialist could not but be greatly surprised at the receipt of this communication, by which, without being made acquainted with any charges against him,—without being afforded any opportunity for justification or explanation, and certainly—without the fulfilment of the assurances held out to your Memorialist, by His Excellency, in the letter last referred to, he was menaced with suspension from office, unless he would consent to some arrangement which would virtually accomplish the object of the House of Assembly; this object being, as above stated, the punishment and disgrace of your Memorialist.

Notwithstanding this communication, of the nature and terms of which your Memorialist apprehends he has just cause of complaint, your Memorialist was still unwilling to believe, that the principle of natural justice, of which he claimed the exercise, would be departed from; and therefore, at the same time that he repudiated the compromise proposed to him, he respectfully renewed his application for the communication of the charges against him. That His Excellency might, also, be aware of the extent of the injury he was about to inflict, your Memorialist disclosed particulars from which that might be inferred; and, in his uncertainty whether an opportunity for answering the charges, or offering explanations respecting them, would be afforded, he transmitted with his letter several affidavits which he thought calculated to influence His Excellency's judgment, in the discretionary power which he was about to exercise.—It was, nevertheless, only on the 24th March, late in the afternoon, that your Memorialist was made acquainted with the charges against him, by the receipt of a letter from Lieutenant Colonel Glegg, inclosing the two Addresses referred to in his letter of the 23rd March. Being then engaged in Court, from an early to a late hour, each day, and having, be-

sides, other official duties which occupied him when released from his attendance in Court, your Memorialist solicited, from His Excellency, a short interval of time, for preparing his answer to the charges specified in the Address of the Assembly; at the same time assuring His Excellency, that, if required, his answer should be furnished the next day.—In reply to his application, your Memorialist was informed, “ That it was quite “ unnecessary that your Memorialist should prepare any answer “ to the charges preferred against him by the House of Assem- “ bly; it being quite foreign to the course that His Excellency “ intended to adopt, to enter at all into the merits of the case, “ one way or other.”

Being thus debarred, by His Excellency, from all opportunity of self-justification, or explanation on the subject of the charges in question, your Memorialist was without any means of informing or enlightening His Excellency's discretion, as to the justice or expediency of inflicting on him the punishment of suspension. He continued, therefore, with His Excellency's menace of suspension impending over him, to discharge the duties of his office, until His Excellency's absolute order of suspension was conveyed to him in a letter from Lieutenant Colonel Glegg. of the 28th March. By this order, His Excellency, in adopting a measure pregnant with great, and perhaps irreparable, injury to your Memorialist, it is most singular to remark, disclaims the exercise of any discretion in relation to it, and would seem to have considered that he was called upon passively to comply with the desire of the House of Assembly. On this order, your Memorialist will only permit himself to remark, that His Excellency's premises, in the reasons assigned for his determination, appear to be strangely at variance with his conclusion. For, while His Excellency professes to have no judgment to exercise on the case, and to be indifferent between the parties, he, nevertheless, inflicts serious injury, in the nature of punishment, on one of them, at the desire of the other; while he also states, that to have abstained from that injury would have given him the character of a judge was acquired or assumed, by making no decision, and exercising no power, to the injury or benefit of either party, and not acquired or assumed, by a decision in favour of one, to

the great injury and perhaps ruin of the other: and as if, in adopting the latter course, on this occasion, His Excellency was to be or could be considered as exercising no judgment, and as being indifferent between the parties.

Although it be most obviously true, as stated by His Excellency, that His Excellency was not invested with the power of a judge, to determine on the merits of the charges of the House of Assembly; it is, nevertheless, also very certain, your Memorialist humbly apprehends, that he was called upon, by the Address of the Assembly to him, to exercise a high discretionary power, preliminary to the determination of His Majesty, which power could not be justly or properly exercised without consideration of the charges, on the one hand, and of the answer or justification opposed to them on the other. Without such consideration, the general presumption, in favour of your Memorialist, of innocence, until conviction, was, your Memorialist apprehends, conclusive against the exercise of such a discretionary power. It would seem also, that His Excellency has not observed or distinctly understood, that the suspension prayed for in the Address of the Assembly, was not a temporary suspension, to continue during the investigation of criminal charges, and until a determination on them might be had, but a suspension in the nature of punishment, preliminary to a still greater punishment, by absolute removal from office and disgrace; and that this suspension, with these consequences, was intended by the Assembly to supersede any investigation whatever, as well as any defence on the part of the accused, and to exclude the exercise of all judicial power over the subject. Under this view of the Address of the Assembly, His Excellency might have been disposed to think he was not, indeed, called upon to exercise judicial functions, but to carry into execution a sentence or judgment of the Assembly; and that the right of the Assembly to pronounce it, as well as the grounds on which it might rest, were fit subjects for grave consideration.

Being, therefore, under the persuasion, that it was the duty of His Excellency the Governor-in-Chief, before inflicting on him the severe injury of suspension, to have permitted him to submit to His Excellency a justification of his conduct, as was solicited, your Memorialist will beg leave, in support of his



present complaint, to bring under your Lordship's consideration, the reasons and grounds which, if such an opportunity for self-justification had been afforded, would have been adduced by your Memorialist, to satisfy His Excellency that his suspension ought not to take place.

While the right of the Assembly to complain of and accuse public officers, who may abuse the trust confided to them, or be guilty of misdemeanours in the discharge of their official duties, is acknowledged by your Memorialist, he respectfully begs leave to deny the right of the Assembly to condemn such officers, or exercise any judicial power over their own accusations against them:—they cannot both accuse and condemn. In the Addresses presented for the suspension and removal of your Memorialist, the right of the Assembly to condemn, as well as to accuse, seems to be implied; inasmuch as no accusation, with a view to defence or answer, on the part of your Memorialist, or to trial, investigation, or judgment, seems to be preferred; but, omitting accusation, defence, trial, and judgment, punishment is prayed for by the Assembly, *uno saltu*, as on a conviction. This is a course of proceeding so fraught with injustice, so destructive of the security of public officers, in what respects their offices, their honour, reputation, and fortunes, and so incompatible with the very existence of His Majesty's Executive Government, otherwise than in subjection to the House of Assembly, that your Memorialist presumes to think no such course of proceeding can be admitted. His Excellency the Governor-in-Chief could not, therefore, in this particular case, suspend your Memorialist from his office, without the greatest injustice to your Memorialist, and without affording his sanction to a course of proceeding of the most dangerous tendency.

FROM THE  
APPENDIX TO THE SAID MEMORIAL.

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*Letter from His Excellency Lord AYLMER, Governor-in-Chief,  
to J. STUART, Esq. Attorney General.*

*Castle of St. Lewis, Quebec, 16th April, 1831.*

SIR,

I could not fail to remark in your letter of the 14th instant, applying for leave of absence to proceed to England, that an intention is announced of "submitting to the consideration of His Majesty's Government, the causes of complaint, on your part, which you humbly apprehend have been afforded by my order suspending you from the office of His Majesty's Attorney General for this Province."

I thus find myself placed in a defensive posture, and in order to obviate the delay which the reference of your complaints from England to Canada, and the receipt of the reply thereto would necessarily create, I propose to you to communicate them to me now, in order that the complaints and my defence may be brought together under the consideration of His Majesty's Government.

I likewise consider it necessary to observe that I am unacquainted with the contents of the bundle of unsealed papers which accompanied your letter of the 14th instant, and which is therein described as a Memorial to the Right Hon. Lord Viscount Goderich, one of His Majesty's principal Secretaries of State.

I have the honor to be, Sir,

Your obedient humble servant,

(Signed) AYLMER, Governor-in-Chief.

The Hon. James Stuart, Attorney General

True Copy, J. STUART.

*Letter from J. STUART, Esquire, Attorney General, to His Excellency Lord AYLMER, Governor-in-Chief, &c.*

Quebec, 16th April, 1831.

MY LORD,

I have been honored with your Lordship's letter of this day, in which, with reference to the reasons assigned in my letter of the 14th instant for my application for leave of absence, your Lordship is pleased to notice, as one of them, my intention to submit to the consideration of His Majesty's Government, the causes of complaint which have been afforded me, by your Lordship's order, suspending me from the office of Attorney General, and in which your Lordship is also pleased to signify your desire, that I do communicate to your Lordship the causes of my complaint on this head, in order that the complaint and your Lordship's defence may be brought together under the consideration of His Majesty's Government.

Your Lordship will permit me to observe, that what is desired by your Lordship has already been accomplished, on my part, by transmitting through your Lordship, to His Majesty's Secretary of State, my humble Memorial, in which the causes of my complaint are distinctly enuniated. This Memorial, with the accompanying documents, which your Lordship is pleased to designate "a bundle of unsealed papers," was, intentionally, sent to your Lordship, unsealed and open, that their contents might be known to your Lordship, and that no statement, in relation to my suspension from office, might proceed from me, to your Lordship's prejudice, or which might be susceptible of contradiction, of which your Lordship had not been made fully conusant.

Your Lordship will therefore perceive, that, to satisfy your Lordship's desire, it is only necessary that I should refer your Lordship to the contents of my Memorial, and of the accompanying documents, now in your Lordship's hands; and this I beg leave respectfully to do.

At the same time your Lordship will permit me to mention, that, if on the perusal of these papers, with the contents of which your Lordship states that you are still unacquainted, any explanations or information, which it is in my power to give, on the subject of my Memorial, should be desired by your Lordship, I shall be most happy to furnish the one or the other, without a moment's delay.

I have the honor to be, my Lord,

Your Lordship's most obedt. humble servant,

(Signed) J. STUART.

His Excellency the Right Honorable Lord Aylmer,  
Governor-in-Chief, &c. &c. &c.

True Copy, J. STUART.

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*Letter from J. STUART, Esq. Attorney General, to the Right Honorable Lord Viscount GODERICH, one of His Majesty's Principal Secretaries of State.*

Quebec, 16th April, 1831.

MY LORD,

Having been recently subjected to suspension from the office of His Majesty's Attorney General for this Province, by an order of His Excellency Lord Aylmer, Governor-in-Chief, I have had the honor of addressing to your Lordship, through His Excellency, a Memorial on this subject, which His Excellency has assured me he will transmit to your Lordship, together with his own despatches, a few days hence. Anxious, however, to obviate the effect of any accidental miscarriage of my Memorial, to be conveyed through His Excellency, I beg leave, herewith, to transmit to your Lordship, by private conveyance, a copy of the same Memorial, and of the same Documents annexed to it, which are now in Lord Aylmer's hands, and which His Excellency, in his letter to me, of which a copy is herewith transmitted, notices under the name of "a

"bundle of papers described as a Memorial to Lord Viscount Goderich."

Expecting to have the honour of submitting, in person, to your Lordship, in a short time, the particulars of the case set forth in this Memorial, I abstain from troubling your Lordship, by adding any thing, at this moment, to the statement contained in it. I may, however, perhaps be permitted, in the singular situation in which I am placed, to notice the aggravated hardship which, in consequence of Lord Aylmer's order of suspension, I labour under, in being suddenly and unexpectedly compelled to relinquish, and withdraw myself from, a lucrative professional practice, which cannot be easily regained; in being deprived of considerable official emoluments; in being made to incur, from the two causes last mentioned, an immediate, certain, and absolute, pecuniary loss of several thousand pounds; in being subjected to temporary discredit, if not disgrace, and an entire derangement of my business, pursuits, and plan of life; and constrained to travel three thousand miles, to answer charges, which are not in a form to be susceptible of answer and investigation, which the party from which they proceed, there is reason to believe, never expected would be answered or investigated, and which, when they are inquired into, will be found to be utterly groundless.

In these circumstances, requiring the exercise of some fortitude, I place the most perfect reliance on the justice of His Majesty's Government, and do not, for an instant, doubt that what is right and proper, in this matter, will be done, without regard to the inequality of the parties.

I have the honor to be, my Lord,

With the greatest respect,

Your Lordship's most obedient, humble servant,

J. STUART,

*Atty. Genl. for Lower Canada.*

The Right Hon. Lord Viscount Goderich, &c. &c.

True Copy, J. STUART.

*Letter from His Excellency Lord AYLMER, Governor-in-Chief  
to J. STUART, Esquire, Attorney General.*

*Castle of St. Lewis, Quebec, 18th April, 1831.*

SIR,

I have the honor of transmitting, for your information, a copy of a letter addressed by me to Lord Goderich, on the subject of that part of your Memorial to His Lordship, which regards myself.

I have only to add, with reference to your letter of the 16th that, in designating your Memorial as a bundle of unsealed papers, nothing more was intended than to give you to understand, that I was unacquainted with their contents, which I was not at that time expressly authorized by you to peruse.

I have the honor to be, Sir,

Your most obedient humble servant,

(Signed) AYLMER, Governor-in-Chief.

The Honorable JAMES STUART, Attorney General.

True Copy, J. STUART.

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*Copy of the Letter referred to in the foregoing Letter.*

*Castle St. Lewis, Quebec, 18th April, 1831.*

MY LORD,

I have the honor of transmitting to you, herewith, a Memorial addressed to your Lordship, by the Attorney

General of this Province, in which I am charged with injustice, in having suspended him from the exercise of his office as Attorney General.

It will not be necessary for me to trespass long on your Lordship's time in meeting this charge, for the case itself (in as far at least as I am individually concerned) and my defence are comprised in a small compass.

The House of Assembly, during their late Session, drew up a Petition to the King, containing very serious charges against the Attorney General, amongst which was one of subornation of perjury.

This Petition was presented to me by the House in a body, their Speaker being at their head, and with all the solemnity which belongs to constitutional forms, requesting that I would forward it to your Lordship, for the purpose of being laid at the foot of the Throne; and the House, at the same time presented to me an Address, which had been carried without a dissentient voice, calling upon me to suspend the Attorney General from the exercise of his office until His Majesty's pleasure should be known, on the subject of the charges preferred in their Petition.

It was in compliance with this request, that I conceived it necessary and expedient to take the important step, which now constitutes the subject of the Attorney General's complaint against me, on the ground that I ought, in justice, to have enquired into the matter contained in the Petition, before I proceeded to visit him with what he considers (erroneously as I must think) a measure of punishment.

In the view which I have taken of this case from the beginning, it appears to me that to enter into the merits of it was, not only foreign to the course which my duty prescribed, but that it would also have been highly disrespectful on my part towards His Majesty, to step in between the House of Assembly and His Majesty, to whom their Petition was directly addressed, and by an act of mine to announce, that I had formed an opinion on the subject, which was expressly submitted for the Royal consideration.

Neither can I be brought to think, that it can justly be in-

ferred from the suspension of the Attorney General, that I had taken part with the House of Assembly against him, for he finds himself now merely in the situation of an accused person, previous to the investigation of a charge preferred against him. It is a situation in which I may shortly find myself, in consequence of the act of which he now complains, and, if I may be permitted to look to my own profession for an illustration of his case, the Attorney General is exactly in the position of an officer under arrest previous to trial by a Court Martial, a situation in which some of the most honorable men that ever existed have found themselves, without ever imputing injustice to the authority by which they have been so placed.

I feel assured that I might confidently refer to the Despatch of Lord Bathurst, of the 7th July, 1817, to Sir John Coape Sherbrooke, when Governor of this Colony, for a justification of my proceeding on this occasion; and I feel also assured that, in turning over the leaves of the Parliamentary History of Lower Canada, I should not have to go far without finding farther arguments in support of it; but I will consent to take this as an entirely new case, and I will contend that my proceeding is perfectly justifiable on the grounds already stated.

I forbear to enter into all the Political considerations connected with the state of the public mind in this Colony, which might with great reason be brought forward in justification of my proceeding; for I feel assured, that in answering the charge of injustice, brought against me by the Attorney General, I stand in no need of the support to be derived from such considerations.

I have only a few words to add, and they shall be very few, because they relate personally to myself.

I am equally incapable of knowingly committing an act of injustice, or of unnecessary severity. The whole tenor of my public life attests this fact; and I can assure your Lordship that no one act of that public life, has ever cost me so much pain of mind, as that which forms the ground of the Attorney General's complaint against me. It was forced upon me by an imperative sense of duty, and had the individual con-



cerned been my own Brother, I could not have acted otherwise.

I have the honor to be, my Lord,

Your Lordship's most obedient humble servant,

(Signed) AYLMER.

A True Copy,

Certified, FREDK. F. MAITLAND,

*Aid de Camp.*

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*Letter from J. STUART, Esquire, Attorney General, to His Excellency Lord AYLMER, Governor-in-Chief.*

*Quebec, 18th April, 1831.*

MY LORD,

I have been honored with your Excellency's letter of this day, transmitting a copy of a letter addressed by your Excellency to Lord Goderich, on the subject of my Memorial to His Lordship; and I beg leave to offer your Excellency my respectful acknowledgments for this communication.

I have the honor to be, my Lord,

Your Lordship's most obedient humble servant,

(Signed) J. STUART,  
*Attorney General.*

His Excellency the Right Honorable Lord Aylmer,  
Governor-in-Chief, &c. &c.

True Copy, J. STUART.

FROM THE

## CORRESPONDENCE

ANNEXED TO THE SAID APPENDIX.

*Letter from J. STUART, Esq. Attorney General, to Lieut. Col.  
GLEGG, Secretary of the Governor-in-Chief.*

*Quebec, Monday, 21st March, 1831.*

SIR,

I learnt yesterday, with some surprise, that the House of Assembly, on Saturday evening, adopted the Resolution to address His Excellency the Governor-in-Chief, for my immediate suspension, and future removal, from the office of Attorney General for this Province, on the ground of misconduct imputed to me. Being a stranger to the proceedings which have led to this measure, I beg leave, through you, to submit to His Excellency, my respectful application to be made acquainted with the nature of these proceedings, as well as with the charges on which they are founded, in order that I may be enabled to satisfy His Excellency, that no cause whatever has been afforded for the imputations with which I have been assailed.

To be accused and condemned for supposed misconduct, not made known to the party criminated,—without a hearing,—and without any opportunity having been afforded for self-defence, is rank injustice, which is rarely experienced; but to be punished also, under the same disadvantages, would certainly be the *ne plus ultra* of oppression.

I have the honor to be, Sir,

Your most obedient humble servant,

(Signed) J. STUART,  
*Atty. General.*

Lieut. Col. Glegg, Secretary, &c. &c.

*Letter from Lieut. Col. GLEGG, Secretary, &c. to J. STUART,  
Esq. Attorney General.*

*Castle of St. Lewis, Quebec, 21st March, 1831.*

SIR,

Having submitted to His Excellency the Governor-in-Chief your letter of this date, I am commanded to assure you, that he has not received any official intimation of the proceedings in the House of Assembly to which you allude, and that at all times and under all circumstances you may firmly rely upon the justice and impartiality of His Excellency.

I have the honor to be, Sir,

Your most obedient humble servant,

(Signed) J. B. GLEGG, Secy.

Honble. JAMES STUART, Attorney General.

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*Letter from Lieut. Col. GLEGG, Secretary, to J. STUART,  
Esq. Attorney General.*

*Castle of St. Lewis, 23rd March, 1831.*

SIR,

The Governor-in-Chief has directed me to inform you that he has received intimation of an intention on the part of the House of Assembly, to present an Address to him, praying that he will be pleased to suspend you from the exercise of your functions as Attorney General, on the ground of certain charges of misconduct which they have instituted against you in that capacity, and respecting which it appears the House of Assembly purpose to address His Majesty.

It is the intention of His Excellency to return for answer to the Address praying for your suspension, that His Excellency will take the matter into consideration, with all the deli-

beration which its importance demands, and that he must defer for a day or two, to return a definitive answer to their Address. In the meanwhile, His Excellency cannot conceal from you, that he greatly apprehends that in the end it will be his painful duty to comply with the desire of the House of Assembly in this instance, unless he can be relieved from the adoption of such a measure, by some arrangement which shall virtually accomplish the object of the House of Assembly, and at the same time be the least hurtful to your feelings.

I have the honor to be, Sir,

Your most obedient humble servant,

(Signed) J. B. GLEGG, Secy.

Honble. James Stuart, Attorney General.

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*Letter from J. STUART, Esquire, Attorney General, to Lieut. Col. GLEGG, Secretary of the Governor-in-Chief.*

Quebec, 23d March, 1831.

SIR,

I have been honored with your letter of this day, in which you inform me, by order of His Excellency the Governor-in-Chief, that His Excellency has received intimation of an intention, on the part of the House of Assembly, to present an Address to him, praying that he will be pleased to suspend me from the exercise of my functions as Attorney General, on the ground of certain charges of misconduct, which they have instituted against me in that capacity, and respecting which, it appears, the House of Assembly purpose to address His Majesty; and in which letter His Excellency is further pleased to inform me, that he greatly apprehends that in the end it will be his painful duty to comply with the desire of the House of Assembly in this instance, unless he can be relieved from the adoption of such a measure, by some arrangement which shall

virtually accomplish the object of the House of Assembly, and at the same time be the least painful to my feelings.

In answer to this communication, I beg leave to mention, that I desire nothing at the hands of His Excellency, except the justice due to me in the office which I have the honor of holding under His Majesty's Government in this Province; and that I neither wish nor expect, in consideration of my personal feelings, that any deviation should take place from that course which His Excellency's duty may require on this occasion. In the exercise of the justice which I claim from His Excellency, I thought, and still continue to think, myself entitled to be made acquainted with the nature of any charges against me, which have been or may be brought under the consideration of His Excellency, by the House of Assembly, and of submitting my answer to such charges, before I am visited with any penal infliction, under the authority of His Excellency. It was under this persuasion, that I had the honour of addressing to you my letter of the 21st instant; on this subject; and from the tenor of His Excellency's answer, conveyed in your Letter of the same date, I was led to expect that the justice which I solicited would not be withheld. I cannot, indeed, still entertain the belief, that His Excellency will feel himself justified in proceeding to the extremity of suspending me from office, without previously receiving my answer to the charges on which His Excellency intimates his inclination to adopt that measure of punishment. I must beg leave, therefore, to repeat the request contained in my letter of the 21st instant, in order that I may be enabled to refute the charges, whatever they may be, to which His Excellency refers in your letter. For I wish His Excellency to be most distinctly assured, that there is not the slightest foundation for a charge of any kind against me, either in my official or private capacity; and that, if an opportunity of answering such charges be afforded, I can have no difficulty in establishing this fact. His Excellency will, therefore, excuse me, if I most unequivocally decline to compromise my rights or character, by consenting to any arrangement which would virtually accomplish the object of the House of Assembly, as suggested in your letter. I beg also, that His Excellency may understand, that

the suspension to which he adverts is a measure pregnant with no small degree of injury to me, and for which, if subjected to it, I must claim an indemnity. My professional and official income is considerable; the annual amount of my receipts for professional services and official duties, cannot be less than between four and five thousand pounds. If I am compelled, by a suspension from office, to take a trip across the Atlantic, to obtain justice there, my absence must occasion me a very large pecuniary loss, and an object not intimated to His Excellency by the House of Assembly, but certainly in the contemplation of the persons with whom the proceedings in question originate, and well calculated to satisfy their motives in part, would be thus accomplished; that is, I should incur a loss of several thousand pounds, in manifesting a readiness to defend myself against unfounded charges, proceeding from private malice and political animosity, which the persons to whom they are ascribable know to be groundless, and which cannot be prosecuted with any rational prospect of success. That the authors of these proceedings are themselves of this opinion, seems to be sufficiently implied by the course which, I am to infer from your letter, has been taken by the House of Assembly. Charges are not exhibited against me, so as to admit of an answer and refutation on my part; but, by a tyrannical, unprecedented mode of procedure, contrary to the first principles of justice, immediate punishment is called for, without the exhibition of charges—without proof of any offence—and without defence, or opportunity for defence on my part. It behoves His Excellency, I must beg permission to state, well to consider, before such a mode of proceeding receives his sanction, the offensive injustice it involves, and the consequences to be apprehended from it, in its application to public officers in general, but particularly when directed against an officer whose public duties render him peculiarly obnoxious to the malevolent and unprincipled machinations of popular agitators.

I should be happy, even in the hasty manner which the numerous official avocations which press on me at this moment would permit, to enter immediately into such explanations as might satisfy His Excellency, that the charges referred to are without a shadow of foundation. But while these are enter-

tained by His Excellency, without any communication of them to me, I cannot, upon mere conjecture of their nature, or upon popular report, presume to offer such explanations. In order, however, that His Excellency, before he comes to the determination adverted to in your letter, may not be deprived, at least, of some information, which might be expected to influence that determination, I beg leave to transmit herewith, for His Excellency's perusal, copies of Affidavits of J. K. Wellea, Esq. Robert Jones, Esq. A. Von Iffland, Esq. and of Messrs. Burke, Carter, Glackmeyer, and Louis Paul,\* in relation to the proceedings at the Sorel election, to which the charges referred to in your letter, I have reason to believe, in part relate.

I have the honor to be, Sir,

Your most obedient humble servant,

(Signed) J. STUART,  
*Attorney General.*

Lieut. Col. GLEGG, Secretary, &c. &c.

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*Letter from Lieut. Col. GLEGG, Secretary, &c. to J. STUART,  
Esquire, Attorney General.*

*Castle of St. Lewis, Quebec, 23d March, 1831.*

SIR,

I have received the commands of His Excellency the Governor-in-Chief, to transmit you the accompanying copies of his Answers delivered to the Addresses which were presented this day, by the House of Assembly, copies of which I shall also transmit to you as soon as prepared.

I have the honor to be, Sir,

Your most obedient humble servant,

(Signed) J. B. GLEGG, *Secy.*

Hon. James Stuart, Attorney General.

True Copy, J. STUART.

\* These Affidavits have already been placed in this Appendix.

*Answer of His Excellency the Governor-in-Chief to the First  
of the Addresses referred to in the foregoing Letter.*

*Mr. Speaker and Gentlemen  
of the House of Assembly,*

I shall not fail to transmit without delay, to the Secretary of State for the Colonial Department, your Petition to the King, praying that His Majesty will be graciously pleased to dismiss the Attorney General of this Province from his office.

(Signed) AYLMER, Governor-in-Chief.

*Castle of St. Lewis, Quebec, 22d March, 1831.*

True Copy, (Signed) J. B. GLEGG, Secy.

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*Answer of His Excellency the Governor-in-Chief to the Second  
of the Addresses referred to in the foregoing Letter.*

*Mr. Speaker and Gentlemen  
of the House of Assembly,*

I beg of you to be assured that it is quite impossible that you can take a deeper interest than I do in whatever concerns the purity of the Administration of Justice in this Province; for it is a matter which affects no less the character of the Government than the interest of the public.

Concurring with you, as I do most faithfully, on this point, and equally anxious with you to see the contemplated charges against the Attorney General brought to a hearing, the House of Assembly on their part will, I am sure, concur with me in opinion, that to suspend from his functions one of the highest Law Officers of the Crown, is a step which ought not to be hastily adopted; and I must therefore trespass on the patience of the House, for a day or two, before I can return a definitive



answer to the prayer of this Address, calling upon me to suspend the Attorney General from the exercise of his functions until His Majesty's pleasure be known.

(Signed) AYLMER, Governor-in-Chief

True Copy, (Signed) J. B. GLEGG, Secy.

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*Letter from Lieut. Col. GLEGG, Secretary, &c. to J. STUART,  
Esq. Attorney General.*

*Castle of St. Lewis, Quebec, 24th March, 1831.*

SIR,

Referring to my letter of yesterday, I have now the honor to enclose you Copies of the two Addresses, presented to His Excellency the Governor-in-Chief, by the House of Assembly, the Answers to which have been already communicated to you.

I have the honor to be, Sir,

Your most obedient humble servant,

(Signed) J. B. GLEGG, Secy.

Honble. JAMES STUART, Attorney General.

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*Copy of the First of the two Addresses referred to in the foregoing Letter.*

To His Excellency the Right Honorable Matthew Lord Aylmer, K. C. B. Captain General and Governor-in-Chief in and over the Provinces of Lower Canada, Upper Canada, Nova Scotia, &c. &c. &c.

MAY IT PLEASE YOUR EXCELLENCY,

We, His Majesty's faithful and loyal subjects, the Assembly of the Province of Lower Canada in Provincial Parliament assembled, most respectfully inform your Excel-

lency, that we have voted an humble Address to our Sovereign Lord the King, praying that, for the reasons therein stated, he will be graciously pleased to dismiss James Stuart, Esquire, from the important office he now fills of Attorney General of this Province, and henceforward not to grant unto the said James Stuart any place of trust whatsoever in this Province.

Wherefore we respectfully pray your Excellency will be pleased to forward the said Address to His Majesty's Ministers, that the same may be laid at the foot of the Throne.

(Signed) L. J. PAPINEAU,  
*Speaker of the House of Assembly.*

*House of Assembly, Quebec, 22d March, 1831.*

True Copy, (Signed) J. B. GLEGG, Secy.

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*Copy of the Second of the two Addresses, referred to in the foregoing Letter.*

To His Excellency the Right Honorable Matthew Lord Aylmer, K. C. B. Captain General and Governor-in-Chief in and over the Provinces of Lower Canada, Upper Canada, Nova Scotia, &c. &c. &c.

MAY IT PLEASE YOUR EXCELLENCY,

We, His Majesty's faithful and loyal subjects, the Commons of Lower Canada, in Provincial Parliament assembled, desiring nothing so much as to draw closer the bonds which connect the inhabitants of this Country with His Majesty's Government, and to provide a remedy for the abuses that might tend to loosen them, address ourselves with the utmost confidence to your Excellency, praying most respectfully that your Excellency will be pleased to suspend James Stuart, Esquire, from the important office which he now fills, of Attorney General of this Province, until His Majesty's pleasure be known, and this, may it please your Excellency—

Because he has abused the power with which he has been invested as such Attorney General, so as to betray the confidence and trust with which His Majesty has honored him, and that he has, by the serious offences which he has committed in his high office, rendered himself totally unworthy of His Majesty's future confidence.

Because the said James Stuart, Esquire, Attorney General of this Province, by persisting in prosecuting before the Superior Tribunals, persons accused of minor offences which ought to have been prosecuted at the Quarter Sessions of the Peace, has been guilty of malversation in his office, and this with the sordid view of increasing his emoluments.

Because the said James Stuart, Esquire, Attorney General of this Province, in order to shew his attachment to the Executive Government of the day, has been guilty of partiality and persecution in the execution of the duties of his office, by instituting libel prosecutions, unjust and ill founded, against divers persons, and has thereby rendered himself unworthy of the confidence of His Majesty's subjects in this Province.

Because the said James Stuart, Esquire, Attorney General of this Province, by making, at the election of Sorel or Borough of William-Henry, in the year one thousand eight hundred and twenty seven, where he was one of the Candidates, use of threats and acts of violence to intimidate some of the electors of the said place, and by promising impunity to others, displayed his contempt of the freedom of election, and has infringed the laws which protect it.

Because the said James Stuart, Esquire, Attorney General of this Province, by prosecuting for perjury certain electors of Sorel aforesaid who had voted against him, and by refusing or neglecting to prosecute others who were no better qualified, but who had voted in his favor, was actuated by motives of personal revenge, which made him forget his duty and the oath he has taken as His Majesty's Attorney General in this Province, and that it would be dangerous to continue to him powers of which he has made use in so arbitrary and unjustifiable a manner.

Because the said James Stuart, Esquire, Attorney General of this Province, by inducing, at the said election of Sorel, certain electors, who were not qualified, to take oaths usual on

such occasions, although he knew that those individuals were not qualified, has been guilty of subornation of perjury.

Lastly, because by his conduct for several years past the said James Stuart, Esquire, Attorney General of this Province, has brought the administration of criminal justice in this Province into dishonour and contempt; and that he has been guilty of high crimes and misdemeanors; that his conduct has utterly deprived him of the esteem and confidence of the inhabitants of this Province, and that his continuing to occupy any place of trust therein could not be otherwise than injurious to His Majesty's Government in this Province.

(Signed) L. J. PAPINEAU,  
*Speaker of the House of Assembly.*

*House of Assembly, Quebec, 21st March, 1831.*

True Copy, (Signed) J. B. GLEGG, *Secy.*

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*Letter from J. STUART, Esquire, Attorney General, to Lieut. Col. GLEGG, Secretary of the Governor-in-Chief.*

*Quebec, 25th March, 1831.*

SIR,

I have to acknowledge the receipt of your letter of the 24th instant, together with copies of two Addresses therein referred to, from the House of Assembly of this Province, the one to His Majesty, praying for my removal from the office of Attorney General, the other to His Excellency the Governor-in-Chief, praying for my suspension from office. Your letter with these Addresses was brought to my house yesterday afternoon, between the hours of four and five. With the multiplicity of official duties pressing on me at this moment, of which His Excellency must be sufficiently aware, it would be extremely inconvenient, and perhaps not without injury to the public service, that I should suspend or omit the personal discharge of these, for the purpose of preparing, at this instant, an answer to

the charges of the House of Assembly. I should therefore be desirous of learning from His Excellency, what short interval of time will be granted by His Excellency for this purpose. If, however, an immediate answer be required by His Excellency, all other business will be laid aside by me, for the purpose of preparing it, and it shall be furnished tomorrow.

I have the honor to be, Sir,

Your most obedient humble servant,

(Signed) J. STUART,  
*Attorney General.*

Lieut. Col. GLEGG, Secretary, &c. &c.

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*Letter from Lieut. Col. GLEGG, Secretary, to J. STUART,  
Esq. Attorney General.*

*Quebec, 25th March, 1831.*

SIR,

Having submitted to His Excellency the Governor-in-Chief, your letter of this date, I am commanded to acquaint you, that so far as His Excellency is concerned, it is quite unnecessary that you should prepare any answer to the charges preferred against you by the House of Assembly, it being quite foreign to the course which His Lordship intends to adopt, to enter into the merits of the case, one way or other.

I have the honor to be, Sir,

Your most obedient humble servant,

(Signed) J. B. GLEGG, *Secy.*

Hon. James Stuart, Attorney General.

True Copy, J. STUART.

*Letter from Lieut. Col. GLEGG, Secretary, &c. to J. STUART,  
Esquire, Attorney General.*

*Castle of St. Lewis, Quebec, 26th March, 1831.*

SIR,

I am commanded by His Excellency the Governor-in-Chief to transmit you the enclosed Copy of an Address, presented to His Excellency this day by the House of Assembly, together with a Copy of His Lordship's Answer thereto.

I have the honor to be, Sir,

Your most obedient humble servant,

(Signed) J. B. GLEGG, *Secy.*

Honble. James Stuart, Attorney General.

True Copy, J. STUART.

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*Copy of the Address referred to in the foregoing Letter.*

*House of Assembly, Thursday, 24th March, 1831.*

RESOLVED—That an humble Address be presented to His Excellency the Governor-in-Chief, praying that he will cause to be transmitted and laid at the foot of the throne, a Copy of the Evidence received by the Committee of Grievances, on the subject of the matters of complaint set forth in the Petition of divers inhabitants of the city of Montreal, complaining of the conduct of James Stuart, Esquire, Attorney General.

Attest,

(Signed) WM. B. LINDSAY,  
*Clerk of the Assembly.*

A True Copy, (Signed) J. B. GLEGG.

*Copy of the Answer of His Excellency the Governor-in-Chief  
to the foregoing Address.*

GENTLEMEN,

The request conveyed in this Address shall be duly attended to, and I will forward without delay, to the Secretary of State for the Colonial Department, for the purpose of being laid at the foot of the Throne, a copy of the evidence received by the Committee of Grievances, on the subject of the matters of complaint set forth in the Petition of divers inhabitants of the City of Montreal, complaining of the conduct of James Stuart, Esquire, Attorney General.

(Signed) AYLMER, Governor-in-Chief.

*Castle of St. Lewis, Quebec, 26th March, 1831.*

A True Copy, (Signed) J. B. GLEGG, Secy.

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*Letter from Lieut. Col. GLEGG, Secretary, &c. to J. STUART,  
Esq. Attorney General.*

*Castle of St. Lewis, Quebec, 28th March, 1831.*

SIR,

In reply to your letter of the 23rd instant, I have been directed by the Governor-in-Chief to state, that His Excellency takes an entirely different view to that which you appear to entertain, regarding the part which he has to perform on the occasion of the application he has received from the House of Assembly, to suspend you from the exercise of your functions as Attorney General, until the pleasure of the King shall be known on the subject of a Petition addressed to His Majesty, praying for your removal from office as Attorney General of this Province.

It appears to His Excellency, that he is not called upon to decide, or even to pronounce an opinion, upon the merits of the case submitted to His Majesty, in the Petition of the House of Assembly. These are questions to be determined by others, and much higher authority than his; and that what he has to consider resolves itself into this simple question—Whether it is expedient or otherwise, under all the circumstances of the case, to comply in this instance with the desire of the House of Assembly. If your suspension from the exercise of your official functions as Attorney General were to be taken as an indication that the Governor-in-Chief had formed an opinion in unison with the view taken by the House of Assembly, of the charges which have been preferred against you, most unquestionably no consideration should induce him to be guilty of an act so palpably unjust, for he is not in this case invested with the necessary authority, or possessed of the necessary information to enable him to pronounce an opinion one way or the other. Neither can His Excellency be brought to think, that your suspension can in reason be considered as implying a conviction of criminality on your part. Supposing that the King should cause you to repair to England, to answer the charges now preferred by the House of Assembly, your suspension would then take place as a matter of necessity, and certainly could not in that case be regarded in the light of condemnation.

On the other hand, should the Governor-in-Chief resist the desire of the House of Assembly on this occasion, he would then indeed invest himself with the character (that of a judge) which he now distinctly disclaims; for were he to suffer you to continue in the exercise of your functions, in the face of the solemn charges preferred by the House of Assembly, it might be very fairly inferred, that in the opinion of His Excellency these charges were not susceptible of being sustained.

The Governor-in-Chief has no right to assume, that the charges exhibited against you proceed from private malice, and political animosity: that again belongs to the merits of the case, with which (he cannot too often repeat it) he has nothing to do. But, the application for suspension comes to him from the whole House of Assembly in a body, as one entire branch of the Legislature of this Province, and in that view is entitled to



very great deference and consideration on the part of the Governor-in-Chief.

Finally—It becomes my duty to inform you, that the Governor-in-Chief, after having maturely considered the request submitted to him by the House of Assembly in all its bearings, finds himself compelled to adopt a measure most painful to his feelings, by desiring that you will consider your functions as Attorney General of this Province, suspended until the pleasure of His Majesty shall be known. The documents which accompanied your letter of the 23d instant, are herewith returned: they have not even been unfolded by the Governor-in-Chief; for being neither Judge nor party in the cause now at issue between the House of Assembly and yourself, he considered the perusal of these documents as quite foreign to the part which belongs to him to perform.

His Excellency desires me to add, that he will willingly transmit to the Secretary of State, these or any other documents or representations which you may think proper to confide to his care.

I have the honor to be, Sir,

Your obedient humble servant,

(Signed) J. B. GLEGG, *Secy.*

Honble. J. STUART, Attorney General.

True Copy, J. STUART.

## No. 4,—p. 133.

*From the first Epistle of Cicero to his brother Quintus, during the third year of his administration of the Province of Asia.*

[ After stating to his brother the necessity, not only of his possessing the virtues requisite in a Governor himself, but of his securing the faithful discharge of their several duties by all who acted under him, he proceeds as follows :— ]

Of those whom the Roman State itself has appointed to be your companions and assistants in the performance of your public duties, you will be answerable for the fidelity within the limits that have been mentioned. But as to those whom you have yourself chosen to be of your domestic society, to be among your constant attendants, who are commonly called the Governor's Suite, (*de cohorte prætoris*,) you must be answerable not only for their acts but their words. You have, however, with you persons whom you may safely favour when they act well, and most easily check when they act discredibly to your name. By some of them, indeed, when you were unexperienced, your generosity had been abused ; since the better any one's disposition is, with the greater difficulty he suspects others. But now a third year has found your upright intention as determined as ever, but improved by greater caution and greater prudence. Let your ears be understood to hear distinctly whatever they do hear ; but never let them be open to feigned and simulated whispers, uttered for dishonourable and interested purposes. Let not your seal be as it were a promise or engagement, but as it were your own self ;—not the agent of another's will, but the witness of your own intention. Let the person who gives out your orders be such as our ancestors wished such a person to be, who wished that place not to be held by favour, but for the performance of a laborious duty, and not given promiscuously, but generally to freemen, who were as much under their

control as their slaves ! Let your Lictor not be the agent of his own will, but of your mild directions. Let the fasces and the hatchets be rather the indications of dignity than the ostension of power.

Let it, in short, be known to the whole province, that the safety, the families, the character, the fortunes of those over whom you preside are the objects of your most earnest solicitude. And let it be clearly understood, both by those of your establishment who have received largesses, and by those who have given them, that every discovery of this kind will make you their enemy. Nor will any such things be given, if it is once fully understood, that nothing can be obtained through the channel of those who profess to have an influence over you. Nothing, however, which I have here said, can have any tendency to make you harsh or even suspicious to those whom you employ. For all those who, in the course of two years, have not given any occasion to suspect them of dishonorable intentions may, I should think, be most properly trusted and relied upon. I hear that Cæsius Chærippus and Labeo belong to this class, and from my personal knowledge of them, I am ready to believe it. But wherever you have discovered any thing improper, or seen any reasonable cause of suspicion, trust not such persons, nor suffer your reputation to be endangered by employing them in your service. But if in the province itself, you have found any one with whom you have formed a familiar acquaintance, beware how you trust him. I do not deny that there are many good men in the province, but it is more reasonable to hope this than safe to trust it. The real disposition of every person is concealed by a cloud of professions, and rendered impenetrable by something like a veil thrown over it. The look, the eye, the countenance often deceive, but the speech oftenest of all. How then, among persons thus devoted to private interest, can we find such as are firmly attached to the good qualities from which you and I could never be withdrawn? such as would from the heart love you a stranger, without pretending it for their own interest? To me it appears a great difficulty to find such; and I am confirmed in this opinion by observing that they make no professions of attachment to private persons, but to Governors always. If, indeed, you find

any one of them more friendly to yourself than studious to promote his personal advantage, inscribe him among your friends. But if you find not the certain marks of sincere affection, be sure that no kind of familiarity is more to be avoided. These persons know all the extent of the influence of money, and all the circuits through which it may be made to pass; they are ready to do every thing for the sake of private interest; they care nothing for the honour and good reputation of him with whom they are not to live long. And even of the Greeks residing there, there are but a few who are worthy of ancient Greece, and whose intimacy may be cultivated with safety. Thus by far the greatest number are deceitful, unsteady, taught by being long enslaved to yield too ready an assent to every thing proposed. I would therefore advise, that all of them be treated with liberality; the best of them with hospitality and kindness. But too much intimacy is dangerous; for they dare not oppose our inclinations, and they envy not only our advantages, but also those of their countrymen.

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No. 5,—p. 155.

*Quebec, 18th April, 1823.*

SIR,

In obedience to the commands of His Excellency the Governor-in-Chief to us, signified by order of reference of the 8th instant, inclosing a letter from Mr. Vallieres, the legal agent of Mr. Goudie, lessee of the King's Posts, claiming possession of the Post of Portneuf, as thereunto belonging; with instructions to report whether that Post belongs to that part of His Majesty's domain which is leased to Mr. Goudie, under the denomination of the King's Posts, we have procured all the information which it is possible to collect on the subject, and now report our opinion for the consideration of His Excellency the Governor-in-Chief.

On reference to Mr. Goudie's lease, bearing date the 26th July, 1822, made out and executed by the King's Notary, the extent of the King's Posts is mentioned in vague and general terms, viz.:—"All those His Majesty's Domain Lands and Posts, situate and lying on the north side of the river Saint Lawrence, in the Province of Lower Canada, commonly called and known by name of the King's Posts." This description was taken by the notary from the conditions inserted in the Quebec Gazette, by order of the Executive Council, and on a reference to the lease, made on the 5th of April, 1802, the like description will be found. From this imperfect description, it became necessary to inquire whether in the Surveyor General's office any better or sufficient description or exact limits could be found or pointed out; but after enquiring from the Surveyor General personally, no exact limits could be given by him, nor could any be pointed out. We therefore referred to a Topographical Map of the Province, drawn by Vondenvelden and Charland, land surveyors, by orders of His Majesty's Provincial Government, under the direction of the late Samuel Holland, Esquire, Surveyor General of the Province, by which Map it appears that the King's Posts consist of the lands, part of which were known under the French Government by the denomination of the Tadoussac (vol. I. edita. p. 63) with several additions, which seem to have been since made to them, as it would appear from this Map, and would comprise all that extent between Black River and Les Caps des Cormorants, excepting Mille Vaches and such other tracts pointed out as conceded; the old lessees being possessed, as of their own property, of the seigniory or fief called Mille Vaches, it became necessary to ascertain where it lay and what it consisted of. We therefore resorted to the original grant of that fief, conceded by Monsieur de Lauzon, Governor to Robert Giffard, on the 2d July, 1670, wherein the extent of the fief is limited and described as follows:—"Trois lieues de front, sur le fleuve St. Laurent, du côté du nord, au dessous de Tadoussac et des grandes et petites Bergeronnes, au lieu dit Mille Vaches, avec quatre lieues de profondeur, tenant par devant sur le dit fleuve, et des autres côtés aux terres non-concédées." The like limits are given

in a foi et hommage, tendered on the 28th May, 1781, by Thomas Dunn and William Grant, Esquires, as proprietors of that fief; this description is well explained and will be understood by referring to the Map, by which it would appear the limits of Mille Vaches were fixed. On enquiring, however, at the Surveyor General's office, it does not appear that any survey or *bornage* has ever taken place, or any *procès verbal* dividing this fief from the unconceded lands of the Crown. The Post of Portneuf, now demanded by Mr. Goudie is, as it appears by the Map, at some distance below Mille Vaches and a portion of the King's Posts, as it strikes us, being within the limits above stated. It will also appear, on reference to the ordinance made by Hocquart, intendant for the limits of the King's Domain, in May, 1733, (vol. 2. edits. p. 87) what was comprised within the limits of the King's Domain before the conquest, and although the names of places and posts have since changed, it is easy to identify the old limits. From all the information by us collected on the present subject, we are of opinion that the Post of Portneuf belongs to that part of His Majesty's Domain which is leased to Mr. Goudie, under the denomination of the King's Posts.

N. F. UNIACKE, *Attorney General*.

GEO. VANFELSON, *Advocate General*.

## No. 6,—p. 168.

The Provincial Councils now existing in the several royal Governments of America, act in their respective Provinces in a twofold capacity, to wit:—1st, As a Council of State, or Privy Council to the Governor, to assist him with their advice in the execution of those parts of his Commission which are branches of the executive power: and, 2d, *As a legislative body, that co-operates with the Governor and Assembly in making laws. It is in this latter capacity that I conceive their constitution to be imperfect, but it is not calculated to obtain for them a sufficient degree of reputation and dignity in the eyes of the people to give weight to their deliberations.* Their present constitution is this: they are appointed by the King in his instructions to the Governor, under the signet and sign manual, and may be removed at the pleasure of the Crown in the same manner: and their number is only twelve. The Instructions to the Governors of the several royal Governments in America are all, as I believe, pretty nearly the same; those to the Governor of Georgia, relating to this subject, are as follows:—

Instruction I.—“ With these our Instructions you will receive our Commission under the Great Seal of Great Britain, constituting you our Captain General and Governor-in-Chief of our Colony of Georgia, in America; you are, therefore, to take upon you the execution of the place and trust we have reposed in you, and forthwith to call together the following persons by name, whom we have appointed to be of our Council for that Colony (to wit, A. B. &c. to the number of twelve.)

Instruction II.—“ And you are with all due and usual solemnity, to cause our said Commission to be read and published at the said meeting of our Council; which being done, you shall then take and also administer to each of the mem-

" bers of said Council the oaths mentioned in an act passed in  
 " the first year of His late Majesty, our royal father's reign :  
 " intituled—' *An Act for the further security of His Majesty's*  
 " *Person and Government, and the succession of the Crown*  
 " *in the heirs of the late Princess Sophia, being Protestants,*  
 " *and for extinguishing the hopes of the pretended Prince of*  
 " *Wales, and his open and secret abettors;*' as, also, make and  
 " subscribe and cause the members of our said Council to make  
 " and subscribe the Declaration mentioned in an Act of Parlia-  
 " ment, made in the 25th year of the reign of King Charles the  
 " 2d, intituled—' *An Act for preventing dangers which may*  
 " *happen from Papist recusants.*' And you and every of them  
 " are likewise to take an oath for the due execution of their  
 " and your places and trusts, with regard to your and their  
 " equal and impartial administration of justice. And you are  
 " also to take the oaths required by an Act passed in the 7th  
 " and 8th years of the reign of King William 3d, to be taken  
 " by Governors of Plantations—' *To do their utmost that the*  
 " *Acts of Parliament relating to the Plantations be observed.*'

Instruction III.—" You shall administer or cause to be  
 " administered the oaths mentioned in the aforesaid Act, in-  
 " tituled—' *An Act for the further security of His Majesty's*  
 " *Person and Government, and the succession of the Crown in*  
 " *the heirs of the late Princess Sophia, being Protestants, and*  
 " *for extinguishing the hopes of the pretended Prince of Wales,*  
 " *and his open and secret abettors,*' to the members and officers  
 " of our Council and Assembly, and to all judges and justices,  
 " and all other persons that hold any office or place of trust or  
 " profit in our said Colony, whether by virtue of any Patent  
 " under our Great Seal of this Kingdom, or our Public Seal of  
 " Georgia, or otherwise. And you shall also cause them to  
 " make and subscribe the aforesaid Declaration. Without the  
 " doing of all which, you are not to admit any person whatso-  
 " ever into any public office, nor suffer those who have been  
 " admitted formerly to continue therein.

Instruction IV.—" You are forthwith to communicate to  
 " our said Council such and so many of these our Instructions  
 " wherein their advice and consent are required; as, likewise,



“ all such others, from time to time, as you shall find convenient  
“ for our service to be imparted to them.

Instruction V.—“ You are to permit the members of the  
“ said Council to have and enjoy freedom of debate, and vote in  
“ all affairs of public concern that may be debated in Council.

Instruction VI.—“ And although, by our Commission afore-  
“ said, we have thought fit to direct that any three of our  
“ Counsellors make a *quorum*, it is nevertheless our will and  
“ pleasure, that you do not act with a *quorum* of less than five  
“ members, unless, upon extraordinary emergencies, when a  
“ greater number cannot conveniently be had.

Instruction VII.—“ And that we may be always informed  
“ of the names and characters of persons fit to supply the  
“ vacancies that may happen in our Council of Georgia, you  
“ are, from time to time, when any vacancies shall happen in  
“ our said Council, forthwith to transmit to our Commissioners  
“ for Trade and Plantations, in order to be laid before us, the  
“ names of three persons, inhabitants of our said colony, whom  
“ you shall esteem the best qualified for that purpose.

Instruction VIII.—“ And whereas, by our Commission,  
“ you are empowered, in case of the death or absence of any  
“ of our Council of the said colony, to fill up the vacancies in  
“ our said Council, to the number of seven and no more; you  
“ are, from time to time, to send unto our Commissioners for  
“ Trade and Plantations, in order to be laid before us, the  
“ names and qualities of any member or members by you put  
“ into our said Council, by the first conveyance after your  
“ so doing.

Instruction IX.—“ And in the choice and nomination of  
“ the members of our said Council, as also of the chief officers,  
“ judges, assistant justices, and other officers whom you are  
“ empowered to appoint, you are always to take care that they  
“ be men of good life, well affected to our Government, of good  
“ estate, and of abilities suitable to their employments.

Instruction X.—“ You are neither to augment or diminish  
“ the number of our said Council, as it is hereby established,  
“ nor to suspend any of the members thereof without good and  
“ sufficient cause, nor without the consent of the majority of

“the said Council, signified in Council after due examination  
“of the charge against such Counsellor and his answer thereunto.  
“And in case of suspension of any of them, you are to cause  
“your reasons for so doing, together with the charge and proofs  
“against the said person with their answers thereunto, to be  
“duly entered upon the Council books, and forthwith to  
“transmit copies thereof to our Commissioners for Trade and  
“Plantations, to be laid before us. Nevertheless, if it shall  
“happen that you shall have reasons for suspending of any  
“Counsellor not fit to be communicated to the Council, you  
“may in that case suspend such person without their consent.  
“But you are thereupon immediately to send to our Commis-  
“sioners for Trade and Plantations, in order to be laid before  
“us, an account of your proceedings therein, with your reasons  
“at large for such suspension, as also for not communicating  
“the same to the Council; and duplicate thereof by the next  
“opportunity.

Instruction XI.—“And whereas we are sensible that effec-  
“tual care ought to be taken to oblige the members of our  
“Council to a due attendance therein, in order to prevent the  
“many inconveniences that may happen for want of a *quorum*  
“of the Council to transact business as occasion may re-  
“quire, it is our will and pleasure, that if any of the mem-  
“bers of our said Council, residing in the said colony,  
“shall hereafter absent themselves from our said colony,  
“and continue absent for above the space of twelve months  
“together without leave from you, or from the Governor or  
“Commander-in-Chief of our said colony for the time being,  
“first obtained under your or his hand and seal; or shall re-  
“main absent for the space of two years successively without  
“our leave given them under our royal sign manual; their place  
“or places in our said Council shall immediately thereafter  
“become void. And that if any of the members of our said  
“Council, residing within the said colony, shall hereafter wil-  
“fully absent themselves from the Council board, (when duly  
“summoned,) without a just and lawful cause, and shall persist  
“therein after admonition, you suspend the said Counsellors  
“so absenting themselves till our further pleasure be known;  
“giving timely notice thereof to our Commissioners for Trade  
“and Plantations, in order to be laid before us. And we do

“ hereby will and require you, that this our royal pleasure be  
“ signified to the several members of our Council aforesaid, and  
“ that it be entered in the Council books of our said Council as  
“ a standing rule.

Instruction XXXVII.—“ And you are, with the advice and  
“ consent of the said Council, to establish a table or tables of  
“ fees, to be taken by the respective officers within our said  
“ colony; taking care that they be within the bounds of modera-  
“ tion, and that no exaction be made upon any occasion what-  
“ soever, as also that such tables of all fees be publicly hung up  
“ in all places where such fees are to be paid. And you are to  
“ transmit copies of all such tables of fees to our Commissioners  
“ for Trade and Plantations, in order to be laid before us as  
“ aforesaid.

Instruction LV.—“ You shall not appoint any person to be  
“ a judge or justice of the peace *without the advice and consent*  
“ *of at least three of our Council, signified in Council.* Nor  
“ shall you execute yourself or by deputy any of the said  
“ offices. And it is our further will and pleasure, that all Com-  
“ missions to be granted by you to any person or persons, to be  
“ judges, justices of the peace, or other necessary officers, be  
“ granted during pleasure only.

Instruction LXII.—“ Whereas it is convenient for our royal  
“ service, that all the Surveyors General of our customs in  
“ America, for the time being, should be admitted to sit and  
“ vote in the respective Councils of the several islands and  
“ provinces within their districts as Counsellors extraordinary,  
“ during the time of their residence there; we have, therefore,  
“ thought fit to constitute and appoint, and we do hereby con-  
“ stitute and appoint, the Surveyor General of our Southern  
“ District, and the Surveyor General of our Customs within our  
“ said District, for the time being, to be Counsellors extraordi-  
“ nary in our said colony. And it is our will and pleasure,  
“ that he and they be admitted to sit and vote in our said  
“ Council as Counsellors extraordinary, during the time of his  
“ or their residence there. But it is our royal intention, if  
“ through length of time, the said Surveyor General should  
“ become the Senior Counsellor in our said colony, that neither  
“ he nor they shall, by virtue of such seniority, be ever capable  
“ to take upon him or them the administration of the govern-

"ment there, upon the death or absence of our Captain General  
"or Governor-in-Chief for the time being. But whenever such  
"death or absence shall happen, the government shall devolve  
"upon the Counsellor next in Seniority to the Surveyor  
"General; unless we should hereafter think it for our royal  
"service to nominate the said Surveyor General, or any other  
"of our said Surveyors General, Counsellors in ordinary of any  
"of our Governments within their survey, who shall not, in that  
"case, be excluded any benefit which attends the seniority of  
"their rank in the Council.

Instruction XC.—" You shall not upon any occasion what-  
"soever establish or put in execution any article of war, or  
"other law martial, upon any of our subjects, inhabitants of  
"the said colony, without the advice and consent of our  
"Council.

Instruction CIV.—" If any thing shall happen that may be  
"of advantage and security to our said colony, which is not  
"herein or by our Commission provided for; we do hereby  
"allow unto you, with the advice and consent of our Council,  
"to take order for the present therein, giving to our Commis-  
"sioners for Trade and Plantations speedy notice thereof, in  
"order to be laid before us, that so you may receive our ratifi-  
"cation, if we shall approve of the same. Provided always  
"that you do not, by color of any power given you, commence  
"or declare war without our knowledge and particular com-  
"mands therein; excepting against the Indians, upon emer-  
"gencies, wherein the consent of our Council shall be had, and  
"speedy notice thereof given to our Commissioners for Trade  
"and Plantations, in order to be laid before us.

Instruction CVI.—" And, whereas great prejudice may  
"happen to our service and the security of our said colony, by  
"your absence from those parts, you are not, upon any pretence  
"whatever, to come to Europe from your Government, without  
"having first obtained leave for so doing from us, under our  
"sign manual and signet, or by our order in our Privy Council.

Instruction CVII.—" And, whereas we have been pleased  
"by our Commission to direct that, in case of your death or  
"absence from our said colony, and in case there be at that  
"time no person upon the place commissioned or appointed by

“ us to be our Lieutenant Governor or Commander-in-Chief,  
“ the eldest Counsellor, whose name is first placed in these  
“ Instructions to you, and who shall be at the time of your  
“ death or absence, residing within our said colony, shall take  
“ upon him the administration of the Government, and execute  
“ our said Commission and Instructions, and the several powers  
“ and authorities therein contained, in the manner therein  
“ directed. It is, nevertheless, our express will and pleasure,  
“ that in such case, the said eldest Counsellor or President shall  
“ forbear to pass any act or acts, but such as shall be immedi-  
“ ately necessary for the peace and welfare of our said colony,  
“ without our particular order for that purpose, and that he shall  
“ not take upon him to dissolve the Assembly, if it should  
“ happen that there should be an Assembly then in being; nor  
“ to remove or suspend any of the members of our Council, nor  
“ any judge, justices of the peace, or other officers civil or  
“ military, without the advice and consent of at least seven of  
“ the Council. And our said President is to transmit over to  
“ our Commissioners for Trade and Plantations, by the first  
“ opportunity, the reasons for such alterations, signed by himself  
“ and our Council, in order to be laid before us.

Instruction CVIII.—“ And, whereas we are willing in the  
“ best manner to provide for the support of the Government of  
“ our said colony, by setting apart a sufficient allowance to such  
“ person as shall be our Governor, Lieutenant Governor, Com-  
“ mander-in-Chief, or President of our Council, residing for the  
“ time being within the same; our will and pleasure therefore  
“ is, that when it shall happen that you shall be absent from  
“ Georgia, one half or moiety of the salary, and of all perqui-  
“ sites and emoluments whatsoever, which would otherwise be-  
“ come due unto you, shall, during the time of such absence,  
“ be paid and satisfied unto such Governor, Lieutenant Go-  
“ vernor, Commander-in-Chief, or President of our said Council,  
“ who shall be resident upon the place for the time being;  
“ which we do hereby order, and allot unto him towards his  
“ maintenance, and for the better support of the dignity of that  
“ our Government. Provided, nevertheless, and it is our intent  
“ and meaning, that whenever we shall think fit to require you  
“ by our especial order to repair to any other of our Govern-

“ments on the continent of America, for our particular service,  
“that then and in such case, you shall receive your full salary,  
“perquisites, and emoluments as if you were then actually re-  
“siding within our colony of Georgia, any thing in these In-  
“structions to the contrary in any wise notwithstanding.”

These are all the Instructions to the Governor of Georgia, that relate to the Council of the Province, excepting some of those relating to grants of land in the Province, which is a branch of power in which the Governor is directed by the Commission itself to act with the advice and consent of the Council. And by these Instructions we may see both how the Councils of the American Provinces are appointed, and what their powers and duties are.

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No. 7,—p. 168 & 170.

FRENCHMAN.—I see that in some respects the Council of Georgia is made to participate with the Governor in the exercise of the executive powers of the state, as for example, in the appointment of Judges and Justices of the Peace, which can only be done with the advice and consent of at least three members of the Council; and in other respects it is made to participate with him in the performance of certain acts of legislation of a peculiar kind, in which His Majesty does not seem to think the concurrence of the Assembly of the Province necessary. Such are the establishment of tables of fees to be taken by the several officers of Government in the Province, and the establishment of martial law or articles of war, for the government of the forces that may occasionally be levied and mustered for the defence of the province. And to both these acts, I observe, *the consent* as well as advice of the Council of the Province, is expressly required by the above-mentioned Instructions. It seems to me, therefore, that the Council of the Province, *is not a mere privy council or council of advice* to the Governor, as I apprehend the Privy Council in England is to the King, who may, if he pleases, lawfully do an act of state in

his Privy Council in direct opposition to the unanimous advice of all the members of it, but is in some cases a *council of controul* upon him, namely, in all those cases in which (by either the Commission or Instructions of the Governor) their *consent* as well as advice is necessary to the execution of his public acts. And besides these two capacities, of a *mere privy council or council of advice* to the Governor, and a *council of controul* to him, with respect to public acts, in which the Assembly of the Province is not required to join with them; they have, by a clause in the commission, a right to act in a third capacity, namely, as a *legislative body*, whose consent is necessary in conjunction with those of the Governor and the Assembly of the people's representatives to the passing of laws, statutes, and ordinances for the peace, welfare, and good government of the Province. And their last capacity is the highest and most important of the three, and that in which they are best known, and most frequently or at least most publicly seen.

This is what I collect concerning the nature of this Council from the Commission of Governors-in-Chief of the American colonies, and from the Instructions you have above recited to me. Pray is this a just conception of it?

ENGLISHMAN.—I think it is a very just one, except that I do not recollect any part of the Commission or Instructions which requires the Governor to hear the advice of the Council concerning any act of government, without also requiring that he should obtain their consent to the doing it. I doubt, therefore, whether the Council of a Province ought ever to be considered in the first of the three capacities you have mentioned, or as a *mere council of advice*. But it certainly is to be considered in the two other capacities of a *council of advice and control*, and of a *legislative council*. Now it is in this last capacity of a *legislative council* that I conceive its constitution to be defective, and to stand in need of the alterations above-mentioned. For, as a *council of advice and controul to the Governor*, in the execution of the powers of his commission I think it is sufficiently numerous; though, even in that capacity, *the members of it ought, in my opinion, to be made absolutely independent of the Governor, or incapable of being either*

*removed or suspended by him even for an hour ; because otherwise they cannot be supposed to act with freedom in the exercise of their power of consenting to or dissenting from the acts of government, upon which the Governor consults them. But as a legislative body, whose consent is necessary, in conjunction with the Governor and the Assembly of the people's representatives, to the passing of new laws in the province, the necessity of amending their constitution is much more apparent. That they may be useful in this capacity, and contribute to excite a reverence in the minds of the people for the laws they concur in enacting, it is necessary that they should be considered as acting freely and independently in their deliberations on public affairs, and as having a large concern or interest in the welfare and prosperity of the Province, and an extensive knowledge of its various wants and resources. And for this reason, it seems to me, they ought in number to be more than twelve persons, and ought to be made, not only independent of the Governor, (so as not to be liable upon any occasion to be either removed or suspended by him,) but even independent of the King himself; I mean, so far as not to be removable from their offices of counsellors, without a complaint of some misbehaviour exhibited against them before His Majesty, in his Privy Council, and a hearing before the committee of the Privy Council by themselves and their counsel, in answer to such complaint, and a report of the said committee of the Privy Council to the King, confirming the truth of the said complaint, and advising His Majesty to remove them from their said offices; after which it should be in His Majesty's choice to remove them from their offices as counsellors, or continue them in the same, by his order in council as he should think proper.*

I could wish, therefore, that their number was in every province increased to at least twenty-three members; and in the more populous provinces to a still greater number; in the large province of Virginia perhaps to forty-three; and that at least twelve of them should be necessary to make a board, and do business as a legislative body; and that they should be appointed by the King, either under the Great Seal of England, or under the Public Seal of the province, in pursuance of warrants to the Governor, under the King's signet and sign manual, directing



the Governor to make such appointments under the Seal of the province, for their lives, or during their good behaviour, so as not to be liable to be removed or suspended by the Governor in any case, nor by the King himself, except by his order in his Privy Council, after a complaint and a hearing before the committee of the Privy Council, and a report to the King by the said committee after such hearing, confirming the truth of such complaint, and advising the King to remove the person complained of from the office of counsellor of the province.

This degree of independence I should think sufficient to render the members of the Council of a province respectable in the eyes of the people, as it could hardly be suspected that the power of removing them from their seats in the Council, (when it was thus reserved to the King alone, and to be exercised by him only by his order in Council, after a complaint against the person to be removed, and a hearing of the same before a committee of the Privy Council, and a report of the said committee confirming such complaint, and advising the removal of the person complained of) would be used improperly, or that the fear of its being so used would have any undue influence upon the minds and votes of the members of the Council in their public actings as a legislative body. But if such a suspicion was entertained in any province, and was found to lessen the dignity of the Council in the eyes of the people, I should, in such case, wish to see the members of the Council appointed in a manner still more independent of the crown; nay, even in such a permanent manner, that nothing but a conviction of treason or felony, upon a trial by jury, should be sufficient to deprive them of their seats in the Council. So much do I conceive it for the benefit of the several provinces, that the members of their Councils should both be and be thought by the people as free as possible from every undue bias and influence in favor of the crown, in their deliberations on the laws which are proposed to be passed for the public welfare. Perhaps, also, the possession of a certain quantity of land in the province ought to be made a necessary qualification for a member of the Legislative Council of the province. But this is a circumstance which we may well suppose His Majesty will usually have regard to in choosing the members of these Councils, in order

to increase their weight and influence in their respective provinces.

These are the alterations I would propose in the constitution of these Councils in the American colonies, which are to join with the Governors and Assemblies of the people in the important business of making laws. As to the *Councils of advice and control* to the Governors, who are to assist them in the exercise of the executive powers of their commission, I see no reason (as I said before) to increase their number. They might, therefore, continue to consist of twelve or thirteen members, (for with the Surveyor General of the Customs, who was a counsellor extraordinary, you may remember the number in Georgia was thirteen,) and should hold their places at the pleasure of the crown, as the King's Privy Counsellors do in England; *but should not be liable to be either removed or suspended by the Governor.* And they might either be members of the greater, or Legislative Council, or not, as His Majesty should think fit. If these alterations of the constitution of the Councils of the American colonies were to be adopted, I am persuaded they would contribute greatly to the ease and tranquility of the King's Government in them, and to the repressing any factious motions or attempts of the Lower Houses of Assembly that might tend to prejudice the King's authority. For as the members of these Councils would have been obliged to the King's favour for their appointment to the office of a Counsellor, they would probably, from gratitude, be sufficiently inclined to support the just prerogative of the crown; and the people, where they saw that the Council was composed of three or four and twenty of the most substantial and discreet and upright men in the province, who were men in no degree dependent on the Governor, and very little dependent upon the King himself, for a continuance in their seats, would consider their operations upon public affairs as the safest and best they could resort to, and would therefore acquiesce in the disappointment of such plausible attempts as might be made by men of turbulent dispositions in the Lower House of Assembly, to diminish the prerogative of the crown, when those attempts were disappointed by the opposition of such a Council. But in the present state of things, the members in the Councils in the royal governments

are very little respected by the people, because they are considered as the mere tools and creatures of the Governor and the crown, who dare not act and vote according to their real sentiments, for fear of being suspended or removed. And sometimes, the extreme smallness of the number makes their acting as a legislative body, with a negative on the resolution of a full Assembly of the people's representatives, appear absolutely ridiculous. Of this we have an instance in the province of South Carolina, in which Sir Egerton Leigh (who was lately the King's Attorney General for that province) tells us (in a pamphlet he lately wrote concerning the affairs of that province) that there have been seldom more than five members of the Council of that province present at the Council board at a time, and that commonly only three members have assembled to despatch the most weighty concerns. Such a Council must necessarily want dignity in the eyes of the people, and consequently can be of little or no use to the King's Government, which can never be well and happily administered but when it meets with the good will and respect of the people who live under it. This measure "of making the members of the Legislative Councils of the Royal Governments in America, more numerous than they now are, *and independent of the crown*, (though originally appointed by it) in order to give them more weight and dignity in the eyes of the people, and thereby to render them more capable of being useful in the support of His Majesty's Governments," is recommended by some of the warmest friends of Great Britain in North America, of which I will mention an instance or two:—In the last year, 1774, a very sensible pamphlet was published for Thomas Cadell, in the Strand, London, intituled, "*Considerations on certain political questions in South Carolina.*" This pamphlet has been generally ascribed to Sir Egerton Leigh, baronet, His Majesty's Attorney General for that province, and is that from which I just now cited that remarkable circumstance concerning the small number of members of the Council of that province, that have usually assembled for the dispatch of public business. But whosoever was the author of it, he appears to be a person well acquainted with the affairs of America, and more especially of that province, and a zealous friend to Great Britain in

America, and to the continuance of an amicable connection between the two countries, upon the old footing of a subjection of them both to the authority of the British Parliament.

In pages 68, 69, 70 of this pamphlet, there is the following passage:—"In my apprehension it seems absolutely necessary that the members of the Council should be increased, for this plain and obvious reason, because a body of 24 counsellors, for instance, appointed by the King, from the first rank of the people most distinguished for their wealth, merit, and ability, would be the means of diffusing a considerable influence through every order of persons in the community, which must extend far and wide, by means of their particular connections; whereas a Council of twelve, several of whom are always absent, can have little weight, nor can their voices be heard amidst the clamour of *prevailing* voices.—I think this body, acting legislatively, ought to be made independent by holding that station during the term of their natural lives, and determinable only on that event, or on their entire departure from the province. But the same person might, nevertheless, for proper cause, be displaced from his seat in the Council; which regulation would, in a great measure, operate as a *check* to an arbitrary Governor, who would be cautious how he raised a powerful enemy in the Upper House by a rash removal; at the same time, that the power of removal should keep the member within proper bounds. The life tenure of his legislative capacity would likewise sufficiently secure that *independency* which is so necessary to this station, and so agreeable to the constitution of the parent state. I know that some persons will raise both scruples and fears; but, for my own part, I think without much reason; for if we attend to the workings of human nature, we shall find that a certain degree of attachment commonly arises to the fountain from whence all independent honour flows. Opposition seldom settles on the persons who are raised to dignity by favour of the crown, it having so much the appearance of ingratitude,—one of the most detested vices; and it ever acts a *faint* and *languid* part, till a descent or two are past, and the author of the elevation is extinct. From this reasoning it seems tolerably clear to me, that the legislator being for life, and deriving his consequence from the crown, will rather incline to *that scale*;

and it is not probable that his opposition, would in any instance, be *rancorous* or *factionous*, inasmuch as (though his life estate is secure) he would not wish unnecessarily to excite the resentment of the crown, or exclude his descendants or connections, perhaps from succeeding afterwards to such a post of honour and distinction in their native country: in short, this idea seems to admit such a *qualified dependency* as will attach the person to the side of the crown in that proportion which the constitution itself allows, and yet so much *real independency* as shall make him superior to acts of meanness, servility, and oppression. Whether these sentiments are well founded or not, I submit to the impartial judgment of my reader; what I principally mean to infer is, that the happiness of these colonies much depends upon a due *blending or mixture* of power and dependence, and in preserving a proper subordination of rank and civil discipline."

And in pages 72, 73, of the same pamphlet is the following passage:—"I cannot close this subject without expressing my sincere concern, that such unhappy disputes divide men's minds and distract the public councils of this country; and I have presumed to offer these considerations to the world, that the subject may be fully understood, and that this colony, as well as others, may judge of it with the greater ease and certainty, by seeing every fact fairly stated and candidly discussed. But I must again repeat, that twelve members of the Council bear no proportion to the numbers of the Lower House, which consists of forty-eight members; and what still adds to the defect is, that as several of the Council are frequently and necessarily absent on their own private concerns, and it often happens that others are either absent from the province, or through sickness, are unable to attend, the Council seldom consists of more than five persons, and commonly only three assemble to despatch the most weighty concerns. This circumstance lessens the real and constitutional dignity which this body are intended to maintain, and the people cannot be taught to reverence or respect an institution, the business whereof is transacted like a Court of Quarter Sessions by three Justices of the Peace! Hence it is that the middle branch is in a manner overwhelmed by the force of numbers in the Lower House, and that they fall into derision

and contempt for the want of numbers in their own. I therefore most ardently wish to see this evil remedied by such an addition to the number of His Majesty's Council, as that twelve members at least may always be assembled on the business of the state. Then, and not till then, will this middle branch be able to maintain a proper balance to support their own constitutional importance, and to withstand the overbearing attempts and the haughty encroachments of the Lower House. I sincerely wish the lasting happiness of the colony of South Carolina, and I am firmly persuaded that nothing is so likely to promote it as a timely and speedy interposition on the part of the crown, and a decisive settlement of those uneasy contentions upon the sound principles of the English Constitution."

And the late Mr. Andrew Oliver, (who was first Secretary and afterwards Lieutenant Governor of the province of the Massachusetts Bay,) in one of his letters to the late Mr. Thomas Whately, (who had been Secretary to the Treasury, under the late Mr. George Grenville) dated February 13, 1769, writes as follows:—"You observe upon two defects in our constitution—the popular election of the Council, and the return of Juries by the towns. The first of these arises from the charter itself, the latter from our provincial laws. As to the appointment of the Council, I am of opinion that neither the popular elections in this province, nor their appointment in what are called the King's Governments, by the King's *mandamus*, are free from exceptions, especially if the Council, as a legislative body, is intended to answer the idea of the House of Lords in the British Legislature. There they are supposed to be a free and independent body, and on their being such, the strength and firmness of the constitution does very much depend; whereas the election or appointment of the Councils in the manner before mentioned, renders them altogether dependent on their constituents. The King is the fountain of honour, and as such the peers of the realm derive their honours from him; but then they hold them by a surer tenure than the provincial Counsellors, who are appointed by *mandamus*. On the other hand, our popular elections very often expose them to contempt; for nothing is more common than for the representatives, when they find the Council a little untractable at the

close of the year, to remind them that—May is at hand.” It is not requisite, that I know of, that a Counsellor should be a freeholder. According to the charter, his residence is a sufficient qualification: for *that* provides only that he be an inhabitant of, or proprietor of, lands within the district for which he is chosen; whereas, the peers of the realm sit in the House of Lords (as I take it) in virtue of their baronies. If there should be a reform of any of the colony charters, with a view to keep up the resemblance of the three estates in England, the Legislative Council should consist of men of landed estates. But as our landed estates here are small at present, the yearly value of 100*l.* sterling *per annum* might, in some of them at least, be a sufficient qualification. As our estates are partible after the decease of the proprietor, the honour could not be continued in families as in England. It might, however, be continued in the appointee *quamdiu se bene gesserit*, and proof might be required of some malpractice before a suspension or removal.” “The King might have the immediate appointment (of these counsellors) by *mandamus*, as at present in the royal governments.” “Besides this Legislative Council, a Privy Council might be established.”

These are the words of Mr. Oliver’s letter to Mr. Whately which agree in substance with those of Sir Egerton Leigh above cited. And they surely are very respectable authorities, and of prodigious weight in favour of such an amendment of the constitution of the King’s Councils in North America, as has been just now mentioned. Alterations of these Governments in favour of liberty, that are suggested and recommended by such friends to the authority in Great Britain, as the authors of the foregoing passages, seem to be indisputably reasonable and expedient, and fit to be adopted by Great Britain.—You now see the reasons of the amendments I have proposed in the constitution of the Provincial Councils of the several royal governments in America, as the last measure which seemed to be necessary to a lasting reconciliation between Great Britain and her Colonies. I have only to add my most hearty wishes, that both this and all the former measures which seemed necessary to the same good end, may be speedily adopted, lest by even a small delay in the present critical situation of affairs, the opportunity

of restoring peace and confidence between the two countries by means of them be lost for ever."

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The Canadian Freeholder, from which the two foregoing extracts are taken, was written by Mr. Mazeres, the first Attorney General of Lower Canada, after the cession of the country, and published in London in the year 1779. There was another work published by him in 1774, intituled "Quebec Commissions," containing many valuable documents relating to proceedings had in this country from the time of the cession down to the passing of the Quebec Act in 1774. Mr. Mazeres does not seem to have returned to Canada after publishing his last work, but remained in England, having had the office of Cursitor Baron of the Exchequer conferred upon him, and died in that office some few years back at a very advanced age. It is not possible to read papers coming from his pen without perceiving that he was a constitutional lawyer of the very first order, a man of integrity and patriotism. He is the author also of some papers or works on mathematical subjects, I think on the doctrine of Chances. His views as to the public policy to be pursued by Great Britain in the government of this colony, were diametrically opposite to those entertained by the then Governor of the colony, Lord Dorchester.

*Extract from the Anonymous Work mentioned at p. 170 of the text, as No. 8.*

"Whatever may have been the reasons which induced Government, in the year 1774, when the Quebec Act was passed, to withhold the full participation of the privileges of British subjects, as the Canadians are now generally convinced of the superior mildness, security, and advantages of a British constitution; and His Majesty's ancient subjects in that province, are now as a body become respectable, compared either in regard to their number, their wealth, the landed property they possess, or their general influence—we presume no suffi-



cient reasons can now be given for continuing an arbitrary system in that country. It has already prevailed too long for the interest of the British Empire; as we hope we shall be able to shew that it has been the cause of much oppression to the people; that it has impeded cultivation and population; has greatly depressed the trade and commerce of that province; and has, in its consequences, been very injurious to Great Britain.

The Quebec Act established a Governor and Council as the legislature of the province; this Council to consist of not more than twenty-three, or less than seventeen members; a majority of the whole Council, when legally assembled, might proceed to the business of legislating. In consequence of this clause, it has been determined by the Council, that nine members (being the majority of seventeen, the smallest number limited by the Act of Parliament) may legislate; and of course, as every thing is carried in the Council by a majority of votes, the acts of five Councillors may legally bind the whole province. The Governor is Commissioned by His Majesty, and the Counsellors being recommended by the Governor, are appointed by the King's mandamus. They may be suspended by the Governor, and removed at His Majesty's pleasure. No qualification is required of the members of that Council, except residence in the province; they may be men entirely unconnected with and entirely ignorant of the various interests of that extended province and its numerous dependencies. Such is the legislature established by the Quebec Act; and we will venture to assert that no country or nation can produce a system, which in its constitution is more arbitrary or despotic. Had the Governor been solely invested with the legislative, as he is with the executive powers, as he would have been accountable to the King, to the nation, and in some measure to the inhabitants of the province, for the propriety and necessity of his legislative acts, these would have served as checks to restrain him from any glaring abuse of those powers; but under the system of legislation established by the Quebec Act, all idea of responsibility is removed; it is the Council that legislates; and as the members of it are, from its constitution, absolutely dependent for their seats at that board, and have each a pension or salary as Coun-

sellor, a Governor may, through them, oppress with impunity.\* There is no incentive to engage the members of that Council to seek after information with a view to the good of the community. The welfare of the people, their ease, their comfort or happiness, must be only secondary considerations under such

\* *List of the present Legislative Council of Quebec.*

Henry Hope .....	£100
And as Lieutenant Governor .....	1500
William Smith .....	100
And as Chief Justice.....	1200
Hugh Finlay. ....	100
And as Post Master General .....	250
Thomas Dunn .....	100
And as Judge of the Common Pleas .....	500
Edward Harrison .....	100
John Collins .....	100
And as Deputy Surveyor General .....	100
Adam Mabane .....	100
And as Judge of the Common Pleas .....	500
J. G. C. Delery .....	100
And Pension .....	200
George Pownal .....	100
And as Secretary of the Province.....	400
Picote de Belletre .....	100
And as Surveyor of the Roads .....	100
John Fraser .....	100
And as Judge of the Common Pleas .....	500
Henry Caldwell (late Deputy Receiver General) ...	100
William Grant (late Deputy Receiver General) .....	100
Paul Roc St. Ours .....	100
François Baby, Lieutenant Colonel Militia .....	100
Joseph de Longueuil, Half-Pay Captain .....	100
Samuel Holland .....	100
And as Surveyor General .....	300
George Davidson, (late Deputy Receiver General) .....	100
Sir John Johnson, Superintendent of Indian Affairs .....	100
Charles de Lanaudiere .....	100
And as Superintendent General of Roads .....	500
R. A. Boucherville .....	100
And as Surveyor of Roads .....	100
Le Comte Dupre, Colonel of Militia .....	100
One Vacant.	

a constitution. The public has no right to expect any great degree of patriotic exertions from a body constitutionally so dependant.\* It cannot be expected that the members of that body, from their situations (few of them being concerned in commercial pursuits) should be sensible of all the inconveniences which the present system imposes on trade and industry; or that they can in any great degree feel as their fellow-subjects, those alarming apprehensions for the security of their property, which uncertain or unknown laws must ever occasion. The laws and ordinances that have been enacted by the Legislative Council, are loudly complained of by the people, as being obscurely worded, and made without sufficient knowledge of the subject; and public objects as may naturally be expected under such a system of government, have been generally neglected. There is not a decent Court House in the province. The jails are small, inconvenient, and in a ruinous condition, very ruinous condition, very hurtful to the health of the prisoners, and a nuisance to the public; and as the Sheriffs are not accountable for escapes, the public laws have no certain remedy in cases of fraud. There has not even been a Protestant church erected in the province.

\* George Allsopp, Esq., was suspended in January, 1783, for having entered a protest in March, 1780, against some proceedings then had in the Council, as will appear by the following copy of the letter of suspension, viz:—

*Council Office, Jan. 9, 1783.*

SIR—I am ordered by His Excellency the Governor to acquaint you that His Excellency, having resumed the consideration of the Protest made by you on the 6th of March, 1780, and of the Minutes of the Legislative Council subsequent to it, has thought proper to suspend you from your seat in the Legislative Council, until His Majesty's pleasure be known.

I have the honour to be, Sir,

Your most obt. humble Servt.

(Signed) J. WILLIAMS.

*Clerk of the Council.*

The Hon. George Allsopp, Esq.

N. B.—Mr. Allsopp was some time afterwards removed from his seat at that board.

Will any one say that the people are not justified in complaining of a system of government so oppressive, and so miserably defective, under which their dearest and most sacred rights are withheld; and their property is the sport of laws which they cannot comprehend. Do these patriotic members of the the community deserve to be branded with the invidious name of factious, who have come forward to lay before His most Gracious Majesty and Parliament, the abuses and grievances that exist in a British province. We know that it must have been the intention of our Gracious Sovereign and of Parliament in passing the Quebec Act, to promote the happiness and prosperity of the inhabitants of that province; it is therefore the duty of every good subject to point out the causes why those gracious intentions have not had the desired effect; and to propose for the consideration of Government such measures as may appear most likely to attain and secure these desirable objects."

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In allusion to the case of Mr. Allsopp, at the end of this extract, in the margin of the volume, we find the following words in writing:—"Look to page 104, and you will see the crime alledged, which does honour to the memory of the accused," and upon referring to it we find the following:—

*Extract from a Protest by George Allsopp, Esq. member of the Legislative Council of Quebec, in Council, 6th March, 1780.*

"It must be allowed that there is a manifest want of order and regularity in the Court of Common Pleas; the first judges or presidents of those Courts not being versed in the science of the law, or the usage of Courts of Judicature, consequently cannot be supposed capable to form or keep up proper regulations for that end; nor do they confine themselves to rules of law, but occasionally decide on the equity of the case, contrary to the letter of the law; the impropriety whereof cannot be better defined than in the words and language of a law officer of respectable authority, in his observations on the former Court of Common Pleas, of which the President of the Legislative

Council, and the three Judges of the Common Pleas, now of the Council, were members.

“ But how vague and uncertain their proceedings as a Court of Equity must be, without one established maxim of Equity in the Court !—How ill calculated to preserve (what it certainly was not intended to preserve) an ancient system of laws, which were to be admitted or rejected upon notions of equity, adopted by gentlemen who merit however no other imputation than the want of education in, or acquaintance with, Courts of Law or Equity, and the confusion in which such decisions must necessarily be involved, are matters upon which I think I need not enlarge !”

“ Since the Quebec Act took place, little or no beneficial alterations have happened in the proceedings of these Courts ; on the contrary, the only desirable parts of the former system have been taken away ; the subject has been deprived of the benefit of juries in actions for personal injuries, the merchant of the decision of causes by the law of merchants, and according to the laws of England, heretofore in use prior to the introduction of the Quebec Bill ; *and no positive law, no fixed or established rule, to supply these defects.* The Courts, now sole judges of the fact and of the law, in all cases, and though generally unacquainted with law, and particularly with the laws of commerce, are left to their own judgments ; consequently their decisions are too arbitrary, and their power too unbounded to tally with the principles of the British Constitution !

“ To prove these assertions it will be considered *that the laws and customs of Canada, which form the most imperfect system in the world for a commercial people,* have, in matters of trade, been long since exploded in France, and the *Code Marchand* introduced in all their Courts in its stead. *Canada, before the conquest of it by His Majesty's arms, had little or no trade of consequence, except that of the India Company for furs, who monopolized almost the whole ; and, therefore, probably not having so great occasion for the Code Marchand or Jurisdiction Consulaire, it was not introduced into this country.*”

## No. 9,—p. 56.\*

*Statement of the Contingent Expenses of the House of Assembly, Session of the year 1828-9.*

No.	£.	s.	d.
1.—Witnesses .....	856	4	4
2.—Accounts paid for Committees .....	222	17	7
3.—Messengers for Committees .....	56	18	3
4.—Clerks of Committees, Extra Writers, &c. ....	2297	11	9
5.—Call of the House .....	21	17	6
6.—Commissioners on Contested Elections ...	118	8	9½
7.—Messengers and Servants .....	403	5	0
8.—Gazettes .....	89	0	7
9.—Wood and Coals .....	71	7	4½
10.—Divers Accounts .....	1549	2	5
11.—Candles .....	81	2	10
12.—Books, &c. ....	94	11	2
13.—Clerks' Petty Disbursements.....	18	3	6
Do. Commission on Cash received .....	60	5	0
	<hr/>		
	Currency	5940	16 1

1829.

*Account No. 10.*

Jan. 31.—Neilson and Cowan, Printing and Stationery to 30th April, 1828 .....	57	10	6
Neilson and Cowan, on Account of Session 1828-9 .....	442	9	6
April 1.—Ditto, on Account of do. ....	500	0	0
	<hr/>		
	1000	0	0

\* “Of late years the expenditures have been considerably augmented by allowances to witnesses. In one instance as much as 120*l.* was allowed to one witness; and the costs so incurred, during the session of, I think, 1828-9, upon a single petition of grievances, amounted to between 600*l.* and 700*l.*—Some witnesses one sees as regularly about a fortnight after the opening of the session as *swallows* in the spring; and although they do not last quite so long, yet they hardly leave Quebec before either the House or the roads break up.”—*Extract from the text, p. 56.*

1828.		£.	s.	d.
Dec. 17.—	T. Cary & Co. Printing, Stationery, &c.	23	0	9
1829.				
Aug. 5.—	W. H. Jones for a full-length Portrait of George IV.....	150	0	0

*Account No. 1.—Witnesses.*

1828.				
Dec. 19.—	H. A. Ballantyne .....	6	2	6
23.—	F. Dayer and A. Bolduc .....	6	0	0
	J. B. Taché .....	14	0	0
24.—	J. Veilleux and F. X. Verrault .....	9	0	0
30.—	Jean Delisle, Grievance Committee	12	10	0
1829.				
Jan. 3.—	Charles Mondelet do. ....	10	0	0
	Henry Griffin do. ....	13	0	0
	David Ross do. ....	13	10	0
9.—	Remi Puire do. ....	4	0	0
	P. de Boucherville do. ....	16	10	0
12.—	P. C. Marquis do. ....	6	0	0
	P. Leprohon do. ....	11	5	0
15.—	Josias King do. ....	3	7	6
17.—	JACQUES VIGER do. ....	20	0	0
19.—	Louis Guy do. ....	13	0	0
23.—	J. R. Rolland do. ....	6	0	0
	JACQUES VIGER do. ....	1	0	0
24.—	Louis Guy do. ....	1	0	0
	JACQUES VIGER do. ....	2	0	0
27.—	W. Scott do. ....	13	0	0
29.—	J. Crebassa do. ....	6	17	0
	Rev. Mr. Kelly do. ....	8	5	0
	J. J. Girouard do. ....	13	0	0
	A. Levallée .....	0	5	0
31.—	M. Boucher and A. Poulin .....	6	0	0
	A. C. Taschereau .....	3	15	0
Feb. 4.—	Pierre Triganne, Grievance Committee	0	7	6
	N. Crebassa do. ....	7	5	0
	Rev. Mr. Driscoll do .....	6	12	6

		£	s	d
Feb. 5.—	<i>M. Glackmeyer</i>	do.	6	17 6
	<i>W. Hall</i>	do.	5	0 0
7.—	<i>H. J. Martin</i>	do.	18	0 0
	<i>G. C. Colclough</i>	do.	18	15 0
9.—	<i>P. J. Cressé</i>	do.	10	0 0
	<i>A. Lovejoy</i>	do.	17	15 0
12.—	<i>Charles Felton</i>	do.	10	0 0
	<i>Joseph Bouchette</i>	do.	4	18 4
13.—	<i>S. Barnard</i>	do.	23	10 0
16.—	<i>W. Macrae</i>	do.	4	10 0
17.—	<i>C. B. Felton</i>	do.	12	10 0
18.—	<i>S. Barnard</i>	do.	2	0 0
21.—	<i>Rufus Miner</i>	do.	19	0 0
23.—	<i>Samuel Brooks</i>	do.	20	0 0
27.—	<i>F. A. Evans</i>	do.	5	0 0
28.—	Chief of Lorette Indians	.....	3	10 0
March 3.—	<i>T. Verrault</i>	.....	5	0 0
	<i>C. F. Goodhue, Grievance Committee</i>	.....	42	10 0
4.—	<i>M. Dostie</i>	do.	4	0 0
5.—	<i>C. de Tonnancour</i>	do.	67	10 0
	<i>C. B. Felton</i>	do.	145	1 0
6.—	<i>P. J. Cressé</i>	do.	47	10 0
7.—	<i>T. McMillan</i>	.....	0	5 0
	<i>T. Murphy</i>	.....	0	5 0
9.—	<i>C. de Tonnancour, Grievance Committee</i>	.....	4	0 0
14.—	<i>P. A. Evans</i>	do.	4	10 0
	<i>Ditto</i>	do.	4	0 0
	<i>Ditto</i>	do.	58	10 0
	<i>S. H. Dickerson</i>	do.	58	10 0
Currency £356				4 4



*To Cash paid, the following Disbursements from 1st January,  
1830, to 15th January, 1831.*

No.	£	s.	d.
1.—Petty disbursements .....	11	14	6
2.—Newspapers, &c. ....	99	18	6
3.—Divers accounts .....	5569	3	3
4.—Clerks of Committees, extra Writers, &c....	1277	2	6
5.—Candles .....	73	12	6
6.—Wood and Coals .....	75	8	6
7.—For Committees.....	16	17	0
8.—Witnesses .....	103	2	6
9.—Messengers and Servants .....	360	10	0
10.—Books.....	508	4	5
	<u>8095</u>	<u>13</u>	<u>8</u>

To the Clerk's Commission on 8575 <i>l.</i> currency, received on account of the contingent Ex- penses of the House of Assembly .....	85	15	0
Total amount of the Contingencies, from 1st Jan. 1830, to 15th Jan. 1831 .....	<u>8181</u>	<u>8</u>	<u>8</u>

*Account No. 3.*

1830.

Feb. 11.—Neilson and Cowan, on account of Session 1828-9; see their accounts ...	2000	0	0
April 24.—Neilson and Cowan, on account of Session 1830.....	1000	0	0
Sept. 4.—Neilson and Cowan, on account of do.	1000	0	0
Printing.....	<u>4000</u>	<u>0</u>	<u>0</u>
Mar. 30.—Neilson and Cowan, Lithographic Maps to Journals of 1828-9 .....	81	14	6
Nov. 19.—Neilson and Cowan for four cases of Stationery .....	246	6	7
Total paid Neilson and Cowan.....	<u>4328</u>	<u>1</u>	<u>1</u>
T. Cary and Co. ....	173	19	6
Printing and Stationery .....	<u>4502</u>	<u>0</u>	<u>7</u>

*Account No. 3.*

	£	s.	d.
April 2.—J. B. Audy, for Portrait George IV.	112	10	0
R. and A. Haddon, frame for do.....	60	0	0
Joseph Bailey, a frame for do. for the one at the Castle .....	35	0	0
	<hr/>	<hr/>	<hr/>
	207	10	0
July 30.—Joseph Bailey, seven Gilt Frames for Portraits of Speakers, &c. ....	21	0	0
Dec. 30.—John James, on account of Painting seven Portraits of Speakers, &c. ....	70	0	0
	<hr/>	<hr/>	<hr/>
	91	0	0
Feb. 11.—T. Cary and Co. for Stationery, Parch- ment, &c. to 26th January, 1830.. ...	159	10	1
Dec. 2.—Do. since do. ....	14	9	5
	<hr/>	<hr/>	<hr/>
1831.	173	19	6
Jan. 5.—Paid Postages from 6th January, 1830, to 5th January, 1831 .....	86	10	4

*No. 8.—Witnesses, &c.*

1830.

Feb. 12.— <i>Chs. Lafrenaye</i> , Three Rivers Petition	5	10	0
<i>L. C. Cressé</i> , do. do. ...	5	6	3
<i>Pierre Desfosses</i> , do. do. ...	5	10	0
<i>Joseph Badeaux</i> , do. do. ...	6	0	0
<i>Charles Mondelet</i> , do. do. ...	5	6	3
<i>L. O. Coulombe</i> , do. do. ...	4	15	0
<i>Petrus Noiseux</i> , do. do. ...	4	15	0
<i>Francis Normand</i> , do. do. ...	5	10	0
18.—A. Boucher, Internal Communications	8	0	0
Charles Chapais, do. do. ....	8	0	0
19.—La. Galarneau, do. do. ....	2	0	0
25.—Jacques Morin, do. do. ....	1	10	0
27.—Louis Lafleche, do. do. ....	0	5	0
C. T. H. Goodhue, several Committees	9	0	0

	£	s	d
March 1.—E. Bercier, Internal Communications.	1	10	0
Abraham Turgeon, do. do. ....	1	0	0
8.—J. Dalrymple, Petition from New Glasgow .....	1	0	0
13.—S. H. Dickerson, on his Petition against Judge Fletcher .....	23	10	0
16.—A. C. Taschereau, Internal Communications .....	4	5	0
	<u>103</u>	<u>2</u>	<u>0</u>

*From 16th January to 18th November, 1831.*

No.

1.—Petty Disbursements .....	25	18	6
2.—Divers Accounts .....	4061	17	1
3.—Newspapers, &c. ....	174	14	2
4.—Clerks of Committees, Extra Writers, &c. ....	1394	2	9
5.—Witnesses and Expences for Committees...	273	18	10
6. Call of the House .....	22	9	1
7.—Wood and Coals .....	46	9	1
8.—Messengers, Door Keepers, &c. ....	440	10	0
9.—Candles .....	67	10	0
10.—Books.....	493	14	4
	<u>7001</u>	<u>3</u>	<u>7</u>

Letter of Credit to Hon. D. B. Viger .....	500	0	0
W. B. Lindsay, Commission on 7125 <i>l</i> .....	71	5	0

J. B. R. Audy, Portrait of George III. ....	75	0	0
J. Bailey, Gilt Frame and Crown .....	35	0	0
	<u>110</u>	<u>0</u>	<u>0</u>

Postages .....	164	10	6
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*Witnesses and Expenses for Committees.*

1831.

Feb. 14.—J. Barthe, Committee of Elections and Privileges .....	1	0	0
J. Barthé & N. Allard, Berthier Petition .....	1	17	6
15.—Joseph Claprood, Grievances.....	4	10	0
19.—Wolfred Nelson do. ....	8	2	6
John Delisle do. ....	30	5	3
T. Imbault, delivering letters to Curés .....	0	15	0
21.—André A. Lavallée, Grievances.....	4	10	0
M. Glackmeyer do. ....	8	0	0
H. Crebassa do. ....	9	0	0
Ant. and Alexis Paul dit Cournoyer... ..	7	1	2
22.—A. Kuper, Committee on Report Commissioners, Richelieu .....	8	10	0
A. Von Iffland, Grievances .....	1	1	6
24.—M. H. Bellerose, Fabriques .....	4	10	0
28.—A. Kuper, Chambly Canal .....	4	0	0
Mar. 1.—Louis Marcoux, Grievances .....	8	10	0
P. Triganne do. ....	7	10	0
P. L. Delegalle do. ....	8	0	0
Alexis Lenoblet do. ....	9	0	0
2.—Messire Cardieux, Fabriques .....	5	0	0
La. Gagné, Hospital .....	0	1	8
4.—Zacharie Cloutier, Fabriques .....	8	0	0
N. Allard, Fisheries .....	0	7	6
8.—J. Drolet, Fabriques .....	2	10	0
10.—Ezra Dorman, Roads .....	13	10	0
11.—C. T. Cherrier, Grievances.....	8	10	0
H. Crebassa do. ....	2	10	0
12.—F. Fournier, Chaudiere Bridge .....	1	10	0
T. Baillargé, Plan Parliament House .....	5	0	0
JACQUES VIGER, Grievances .....	11	0	0
Mar. 21.—Louis Prevost, Copying Evidence of Grievances .....	8	5	3
Wm. Green, Documents do. ....	2	4	11
Perrault and Burroughs, do. ....	7	5	6
22.—Green and Perrault, do. ....	1	7	0

	£	s.	d.
24.—S. H. Wilcocke, Translations Education	1	10	0
April 14.—W. Sax, Plans for Road Committee ...	5	0	0
8.—S. H. Wilcocke, Translations for Grievance Committee .....	31	5	4
May 4.—Perrault & Burroughs, Documents do.	8	13	0
5.—S. H. Wilcocke, Translations for do....	3	19	9
Do. Translations Education .....	1	12	9
Do. Translations Rimousky Election ..	1	2	3
13.—E. Droulet, going to Beaufort with a Letter .....	0	8	0
18.—S. H. Wilcocke, Translations for Committee of Grievances .....	2	1	7
Do. Roads' Reports .....	10	15	5
Currency	273	18	10

*Neilson and Cowan's Account, from 17th Jan. to 7th Nov. 1831, 2350l.; Appendix 600l. to 700l. say 3050l.*

*From 12th June, 1828, to 24th November, 1830.*

200 Copies of the Governor's Speech, 6 pages folio, foolscap paper, pica type, 7s. per page for composition; press work and paper 3s. per page; folding and stitching 7s. per 100.

100 Governor's Message respecting an Estimate of the Expences of the Civil Government, making two sheets foolscap, at 40s. ....	4	0	0
Folding and stitching the same.....	0	7	4
	4	7	4

200 Copies of the First Report on the Governor's Message of 14th February, with Orders of Reference and Minutes of Evidence, making 28 pages folio foolscap, as follows:

12 pages, pica type, plain, 7s. each for composition	4	4	0
14 pages, small pica, 9s. 11d. do. ....	6	18	10
2 pages, Bourgeois, rule work, 14s. 9d. do. ....	1	9	6
28 pages press work and paper, 3s. per page per 100	8	8	0
Folding and stitching, 10s. 8d. per 100. ....	1	1	4
	22	1	8

Printing Bills, 1 $\frac{1}{2}$  16s. 6d. per sheet, exclusive of folding and stitching, 4s. 8d. per 100.

Lettering 466 volumes, 7d. per volume.

200 Copies of the St. Maurice and Ottawa Exploration Report of the Year, 1830.

5 $\frac{1}{2}$ pages, long primer, 19s. 6d. each for composition	5	7	3
24 pages, small pica, 17s. .... do. ....	20	8	0
29 $\frac{1}{2}$ pages press work and paper, 4s. per page per 100	11	12	0
200 Copies for Appendix .....	14	0	0
	<hr/>	<hr/>	<hr/>
	52	1	3

200 Copies of the Journal of Session 1831, making 564 folio demi pages, pica type, including the Indices, 12s. per page for composition .....	338	8	0
Press work and paper, 4s. per page per 100 .....	225	12	0
Half-binding the same in strong red Basil, 200 vols. 7s. per volume . ....	70	0	0
	<hr/>	<hr/>	<hr/>
	634	0	0

200 Copies of the Saguenay, St. Maurice, and St. Laurence Report, in French and English .....	46	12	3
800 Copies of the Report on Education and Schools, in French and English .....	211	19	6
100 Copies 1st, 2d, and 3d, Grievances Reports, in English .....	162	18	0
400 Copies of do. in French .. ..	133	2	0
200 Copies of Post-Office Report, in English and French.....	34	14	0
400 Copies of 1st and 2d Reports on Roads and Public Improvements, in English and French	121	11	0
400 Copies of the 2d Grievance Report in English and French, with Evidence, 146 folio foolscap	151	6	7
Printing Bills, at the rate of 36s. 6d. per sheet for first 100 copies and 11s. 3d. per do. for each additional 100 copies.			

In order to exhibit more distinctly the expence attending the Committee of Grievances, Italic letters have been used wherever the items of that class of expenditure occurred in the foregoing accounts.—*Miserabile viciu !*

THE END.

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